

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

RODNEY D. PIERCE, et al,

Plaintiffs,

vs.

4:23-CV-193-D-RN

THE NORTH CAROLINA STATE BOARD OF ELECTIONS, et al,

Defendants.

FEBRUARY 5, 2025
BENCH TRIAL - DAY 3
BEFORE THE HONORABLE JAMES C. DEVER III
UNITED STATES DISTRICT JUDGE

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Official Court Reporter
United States District Court
Raleigh, North Carolina
Stenotype with computer-aided transcription

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PLAINTIFFS' EXHIBITS

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21, 22, 24, 27-34, 117, 123-125, 264, 243, and 271	110
104	4

T. Burch - Direct Examination

1 (Wednesday, February 5, 2025, commencing at 1:30 p.m.)

2 **P R O C E E D I N G S**

3 THE COURT: Good afternoon. You may continue the
4 direct examination.

5 MR. JONES: Your Honor, before I continue, one very
6 brief housekeeping matter. When we moved in the joint
7 exhibits at the beginning of the trial, you'll recall that we
8 had held back Joint Exhibit 104. We have now subbed in the
9 correct version and Plaintiffs move the admission of Joint
10 Exhibit 104.

11 THE COURT: It'll be received.

12 (Plaintiffs' Exhibit No. 104 was admitted into evidence.)

13 BY MR. JONES:

14 Q. Good afternoon, Dr. Burch. Before the lunch break we are
15 talking about the role of historical and contemporary
16 discrimination in causing the racial disparities that exist
17 between Black and White people in North Carolina today.

18 And just to reorient us, can you tell us, just at a high
19 level, what was your conclusion on that question on whether
20 those racial disparities in education today result from racial
21 discrimination?

22 A. Yes. I concluded that racial discrimination, both
23 historical and contemporary, in North Carolina do contribute
24 to those educational disparities that I had discussed earlier.

25 Q. Thank you. And before lunch you had talked about the

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1 history of legal racial segregation and education in North
2 Carolina. Do younger adults in the North Carolina electorate
3 also -- have they faced and continue to face educational
4 discrimination? And I'm on page 5 of your report, if that
5 helps orient you.

6 A. Yes. For instance, on page 5 of my report I discuss that
7 multiple school districts in North Carolina have been found to
8 provide Black students with unequal education compared to
9 that with White students. And then those -- the districts
10 have begun to remedy some of those issues, but that began in
11 only recent years.

12 And so, for instance, Bertie County, the Board of
13 Education there was found to have operated, quote, "A racially
14 identifiable White elementary school in 2003. Again, 2003
15 seems like a long time ago, but people who went to elementary
16 school in 2003 are voters today."

17 So when we think about court rulings and other findings
18 of racial disparities and discrimination that happened in the
19 1990s and 2000s, we're talking about people who are in the
20 electorate today.

21 Similarly, we've seen that there are other districts in
22 the state, such as Durham, in Durham, Wake, and Winston-Salem,
23 they've had to enter into voluntary agreements with the U.S.
24 Department of Education. They were found to be disciplining
25 Black students at statistically higher rates than White

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1 students for the same offenses. So we can link that directly
2 to earlier when I talked about racial disparities in school
3 discipline, those racial disparities, the Department of
4 Education found that in those districts, as examples, those
5 disparities weren't caused by Black students behaving
6 differently, again, they were being disciplined at higher
7 rates for the same offenses.

8 Q. Thank you, Dr. Burch.

9 Turning to page 6 of your report, do students in North
10 Carolina continue to face school segregation and disparities
11 in educational outcomes today?

12 A. Yes. So, again, school segregation is traditionally
13 thought of as a marker of unequal education for various
14 reasons. And Duke University researchers have found in a 2020
15 report that school segregation has actually increased in North
16 Carolina, so it's getting worse over time since 1998.

17 And statewide the index of dissimilarity, which is a
18 measure of segregation, for North Carolina elementary schools
19 was about .44, which is considered to be moderately segregated
20 overall with respect to the state. And -- but in Halifax,
21 Washington, and Vance Counties, those -- in those counties,
22 elementary school segregation is considered high. It's
23 also -- Warren and Martin County are also moderately racially
24 segregated as well.

25 Other evidence that I cite in my report does talk about

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1 the educational segregation in the northeastern part of North
2 Carolina as well.

3 Q. And you identified a couple of specific examples there
4 regarding educational segregation today in northeastern North
5 Carolina. Could you identify those?

6 A. Yes. So I -- here I cite statistical evidence from
7 researchers on North Carolina that resegregation is driven by
8 four factors in its private schools, charter schools,
9 balkanized school districts, which pretty much mean there's a
10 city district and a suburban district instead of one unified
11 district, and also districts between schools, and then charter
12 and private schools.

13 So in the northeastern part of the state, the researchers
14 found that private schools were serving as the principal
15 mechanism for educational segregation. And so Bertie -- they
16 specifically discuss this for Bertie, Northampton, and
17 Hertford Counties. That, of course, is also related to the
18 fact that White students are more likely to receive vouchers
19 for private schools.

20 So private schooling is both driving -- has been found to
21 be driving growing educational segregation in this region, and
22 statewide White students are only 49.7 percent of North
23 Carolina's K through 12 students but receive 64 percent of
24 vouchers for private schools, so a disproportionate share.

25 Q. Thank you, Dr. Burch.

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1 Before we move on to a new topic, could you briefly
2 summarize for the Court your conclusions regarding education,
3 specifically in terms of the existence of racial disparities,
4 their connection to racial discrimination, and the impact on
5 voting participation?

6 A. Yes. So consistent with the political science
7 literature, education is the most important explanatory
8 variable for voting, voter turnout, and there are racial
9 disparities in education attainment and achievement in North
10 Carolina today. And along all the measures that I studied
11 both statewide and for the counties I was asked to examine,
12 those racial disparities existed and they were large.

13 Moreover, in my report, I discussed several pathways,
14 both historical with respect to the large proportion of North
15 Carolina's electorate that was subject to Jim Crow schooling
16 as well as -- and that's the current electorate, as well as
17 further issues such as educational segregation that still
18 plague North Carolina's schools today. And I discuss in my
19 report the ways that those -- that educational segregation
20 increases racial test score gaps and that segregation -- and
21 that test score gaps are also the result of the fact that
22 Black students, for instance, don't have access to the same
23 level of certified, qualified teachers as White students in
24 the state.

25 So I provide lots of research on North Carolina specific

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1 research showing the structural barriers to equal educational
2 opportunities.

3 Q. Thank you.

4 Turning to page 13 of your report. Did you also analyze
5 racial disparities with respect to four socioeconomic factors?

6 A. Yes, I did. Employment, income, poverty, and
7 homeownership.

8 Q. And can you describe what impact do these socioeconomic
9 indicators have on voting participation?

10 A. So, as I said before, voting is costly and so it might be
11 easier for someone who has a salary, for instance, to take
12 time off work because they don't have an opportunity cost of
13 losing out on their hourly wages. Or again, obtaining
14 documents, for instance, might be easier for someone who is
15 not in poverty, who is higher income.

16 Q. Let's start with unemployment. Turning to page 14 of
17 your report. What did you find regarding racial disparities
18 in Black and White unemployment in North Carolina at the
19 statewide level?

20 A. So statewide I found that the Black unemployment rate at
21 8.3 percentage points is higher than the White unemployment
22 rate which was 4.3 percentage points.

23 Q. And in your view, is that a large racial disparity
24 between Black and White unemployment in North Carolina as a
25 whole?

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1 A. Yes.

2 Q. Did you also analyze racial disparities in unemployment
3 in the Black-Belt counties?

4 A. I did.

5 MR. JONES: Can we pull up Plaintiffs' Exhibit No.
6 31 which was Figure 6 in Dr. Burch's report?

7 BY MR. JONES:

8 Q. Can you describe what this figure is showing?

9 A. So this figure is showing the civilian unemployment rate
10 by race for the counties I was asked to examine. Again, the
11 data comes from the American Community Survey and the Y axis
12 shows the percent unemployed.

13 Again, the consistent pattern is that Black people in
14 each of these communities have higher unemployment rates than
15 the White people in these communities, and that is uniform
16 across all of the communities.

17 In many of these contexts, such as Gate -- Gates and
18 Martin County, for instance, these numbers are quite large.
19 So here, the gap -- in Gates County the gap is about -- let's
20 say that's about 13 to 14 percentage points, and it's about 13
21 to 14 percentage points in Martin County as well.

22 Q. What is the Black unemployment rate in Gates County?

23 A. The estimate is 20 percent.

24 Q. And in Martin County?

25 A. It looks like that's about 17 percent.

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1 Q. What's the highest White unemployment rate in any of
2 these counties?

3 A. It's -- it looks like it's in Warren County, and I think
4 that's about six or seven percent.

5 Q. Let's talk about income, which is another socioeconomic
6 indicator that you analyzed.

7 Turning to page 15 of your report. What did you find
8 regarding racial disparities in household income at the
9 statewide level?

10 A. So statewide, the median income of North Carolina
11 households, which is basically a measure of -- at which point
12 the half the households are above and half of households are
13 below that number. So the median income of households headed
14 by Black people in the state is just under \$43,000 which is
15 more than \$20,000 less than the median income of White
16 households which is about 60 -- just over \$68,000 a year.

17 Q. Is that a large racial disparity in household incomes
18 between Black and White households in North Carolina?

19 A. Yes. It's about two-thirds.

20 Q. Did you also analyze racial disparities in household
21 income in the Black-Belt counties?

22 A. I did.

23 MR. JONES: Can we pull up Plaintiffs' Exhibit No.
24 32, which is Figure 7 in the report.

25 BY MR. JONES:

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1 Q. Once again, Dr. Burch, can you explain what this figure
2 is showing?

3 A. So this figure shows us the median household income,
4 again, by race. And here on the side, the Y axis, we have the
5 2021 inflation adjusted dollars for all of the counties I was
6 asked to examine. And we can see here that the light gray
7 bars for each county, White head of households are earning
8 tens of thousands of dollars more than Black head of
9 households across all of these counties.

10 For instance, in Bertie County, that looks like a gap of
11 about 52,000 to 27,000. For Gates County, for instance, it's
12 about 65,000 to just over 30,000. Halifax County
13 comparatively -- just over 50,000 compared to just under
14 30,000.

15 Q. I realize the specific dollar values are not on here, but
16 just based on the bar chart what is approximately the highest
17 Black median household income in any of these counties?

18 A. It's under \$40,000. So it's less than the Black median
19 for the state.

20 Q. And in all of these counties, what is the lowest median
21 household income for White households?

22 A. It's about \$50,000 in Hertford County.

23 Q. So that means in these counties, in all of these
24 counties, the highest Black median household income is more
25 than \$10,000 less than the lowest White median household

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1 income?

2 A. Yes.

3 Q. Let's talk about racial disparities in poverty. We're
4 still on page 15 of your opening report.

5 What did you find regarding racial disparities in poverty
6 statewide?

7 A. So when we look at family poverty, that is the percentage
8 of families in each group that are -- have incomes below the
9 poverty line, we can see that the White poverty rate in North
10 Carolina is about 6.3 percent for families whereas for Black
11 families it's about 17.3 percent, so nearly triple.

12 Q. Did you also analyze racial disparities in poverty in the
13 Black-Belt counties?

14 A. I did.

15 MR. JONES: Can we pull up Plaintiffs' Exhibit No.
16 33 which is Figure 8 in Dr. Burch's report.

17 BY MR. JONES:

18 Q. Dr. Burch, what is this figure showing?

19 A. So this figure, similar to the ones we've seen already,
20 are taking data from the American Community Survey, this time
21 looking at family units by race of householder and this is
22 the -- along the Y axis is the percentage of families who
23 are -- have incomes below the poverty line for families. And
24 what we can see is Black poverty is orders of magnitude higher
25 in all of these counties than White poverty.

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1 So Bertie County, White poverty is about four percentage
2 points whereas Black poverty is over 30 percent of families.
3 So, again, that's more than seven times as much.

4 Washington County, White poverty is again around between
5 three and four percent, and Black poverty is almost -- looks
6 to be almost 34 percent. Again, these numbers are orders of
7 magnitude greater.

8 Q. Just focus there again on Washington County. Does that
9 large black bar mean that over a third of families headed by a
10 Black person in that entire county are living in poverty?

11 A. That's right.

12 Q. What is the lowest level of family poverty by households
13 headed by a Black person in any of these counties?

14 A. It hovers just under 20 percent in Hertford, Martin, and
15 Northampton counties.

16 Q. And what is the highest level of family poverty in
17 households headed by a White person in any of these counties?

18 A. Fifteen percent in Chowan.

19 Q. So once again, are we seeing that in all of these
20 counties, the lowest level of Black family poverty is still
21 higher than the highest level of White family poverty?

22 A. Yes.

23 Q. Let's talk about racial disparities in homeownership.
24 And we can pull this slide down. Turning to page 18 of your
25 report.

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1 What did you find regarding racial disparities in
2 homeownership in North Carolina?

3 A. So I found that racial disparities in homeownership
4 exists. Like the other socioeconomic factors, race matters --
5 sorry -- homeownership matters because of the cost of voting.
6 So once you are residentially stable, it's actually easier for
7 you to maintain your registration. Renters, every time you
8 move you have to update your registration and your documents,
9 such as your driver's license, for instance.

10 So the gap in homeownership rates by race, about
11 75 percent of White householders own their homes in North
12 Carolina compared to just 47.1 percent of Black householders.

13 Q. Is that a large gap in homeownership between Black and
14 White householders in North Carolina?

15 A. It's nearly 30 percentage points, so yes.

16 Q. Does historical and contemporary racial discrimination
17 contribute to today's racial disparities in employment,
18 income, poverty, and homeownership in North Carolina?

19 A. In my opinion, yes.

20 Q. Can you explain how you came to that conclusion?

21 A. Yes. So in my report I discuss the difficulty that Black
22 people in North Carolina and in the country generally research
23 shows that Black people face discrimination in the labor
24 market as well as in markets for access to capital, and that
25 includes mortgages.

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1 So on page 14, I look at experimental studies, audit
2 studies that are widely cited studies that talk about the
3 penalty of having an African American name, or Pager and
4 Quillian talk about the fact that -- in one of their famous
5 findings is that a Black person without a criminal background
6 actually finds it harder to get a job than a White person with
7 a criminal background in their research.

8 So I've also discussed EEOC charges filed in recent years
9 as well as I said evidence of discrimination in access to
10 credit markets.

11 So on page 18, I talk about historical and contemporary
12 discrimination. Some of that with respect to redlining and
13 the like. In the story of the FHA, it did happen here, but
14 there is also redlining that persists. So the U.S. Department
15 of Justice in North Carolina Attorney General's Office
16 actually found -- found the -- recent settlement with First
17 National Bank of Pennsylvania for engaging in what they call a
18 pattern or practice of lending discrimination by redlining
19 predominantly Black and Hispanic neighborhoods in Charlotte
20 and Winston-Salem.

21 Other studies have shown that even after you control for
22 factors that should matter for a mortgage, like the size of
23 your downpayment or your credit scores, minority homebuyers
24 are denied mortgages at higher rates; and when they are able
25 to get mortgages, they actually pay more for those mortgages

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1 than similarly situated White borrowers.

2 Q. Let's talk about health. Turning to page 18 of your
3 report. Did you also analyze racial disparities with respect
4 to health outcomes and health insurance?

5 A. I did.

6 Q. And for starters, what impacts does health have on voting
7 participation?

8 A. So health can have many -- can affect voting through many
9 pathways. For instance, the decline that we see in very old
10 age in terms of voting is usually due to health challenges.
11 Sometimes that can be about -- related to the availability of
12 free time and money that you could use -- if you're spending
13 money on medication, for instance. Other times if you are
14 very ill, you may need a helper or caregiver who is not always
15 accessible and so physical disability may be a barrier as
16 well.

17 Q. Is life expectancy one general measure of overall health?

18 A. Yes. And I discuss life expectancy both statewide and in
19 the counties I was asked to examine in this case.

20 Q. What did you find regarding racial disparities in life
21 expectancy between Black and White North Carolinians at the
22 statewide level?

23 A. So statewide White North Carolinians are expected to live
24 about three years longer than Black North Carolinians, and you
25 can see those disparities in the counties as well.

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1 Q. Did you also analyze racial disparities in life
2 expectancy in the Black-Belt counties?

3 A. I did.

4 MR. JONES: Can we pull up Plaintiffs' Exhibit No.
5 34, which is Figure 9 in Dr. Burch's report.

6 BY MR. JONES:

7 Q. I believe this is the last one of these charts. Dr.
8 Burch, can you tell us what this figure is showing?

9 A. So this figure actually presents data from the North
10 Carolina Department of Public Health instead of the American
11 Community Survey. And here, these are the calculations of
12 life expectancy at birth, so when a baby is born how many more
13 years are they expected to live.

14 And what we can see, again, for the counties that I was
15 asked to examine, life expectancy is almost uniformly higher
16 for White instead of for -- as opposed to for Black people in
17 each county. The only exception is Hertford County where they
18 are about even.

19 In some of these counties, again, just looking at
20 Washington County, life expectancy -- the life expectancy gap
21 is about five years. I think we see gaps of four years --
22 just over four years in Northampton County. So these are not
23 small gaps; these are large gaps in years people are expected
24 to live.

25 Q. Turning to page 19 of your report. You found racial

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1 disparities with respect to several other health indicators
2 beyond just life expectancy, what were those?

3 A. So with respect to other indicators of overall health, so
4 infant mortality, Black babies are more than twice as likely
5 to die in infancy of White babies. Infant mortality is
6 generally a measure of the overall health of the population.
7 So if you think about it, healthy moms are more likely to have
8 healthy babies, for instance.

9 Also, Black people are less likely, have lower incidence
10 of cancer rates here in the state but are more likely to die
11 from cancer if they get it so the death rates from cancer,
12 invasive cancer are higher for Black than for White North
13 Carolinians.

14 Diabetes rates are higher for Black North Carolinians as
15 well, and also access to healthcare is lower. So Black North
16 Carolinians, about 9.1 percent of Black residents in the state
17 are uninsured compared to about 6.4 percent of White
18 residents.

19 Q. Did you analyze whether these racial disparities in
20 health are connected to historical and contemporary racial
21 discrimination?

22 A. Yes. So as I said before, there are issues of access to
23 healthcare and also to nutritious food. We already talked
24 about the gap in health insurance coverage, but there are also
25 structural barriers, such as access to an adequate number of

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1 primary care physicians, obstetric care providers. Black
2 people are more likely to live near environmental hazards
3 which can cause negative health outcomes, and rural Black
4 communities such as in this area are -- people tend to live in
5 food deserts where they lack access to grocery stores that
6 provide more nutritious food and fresh fruits and vegetables
7 and the like.

8 Q. Are there more likely to be food deserts in rural Black
9 communities in North Carolina than White rural communities?

10 A. Yes. In my report, I note that -- in my rebuttal report,
11 I note that I believe it's -- in rural Black areas that are
12 60 percent -- rural areas that are more than 60 percent Black,
13 about 81.7 percent of those areas tracts -- census tracts or
14 food deserts compared to only 8.7 percent of rural districts
15 that are more than 60 percent White. So it's a very large gap
16 in terms of the access to nutritious food.

17 Q. You also analyzed criminal justice involvement. Turning
18 to page 22 of your report. For starters, what impact does
19 criminal justice involvement have on voter participation in
20 North Carolina?

21 A. So in North Carolina there are direct and indirect
22 criminal justice involvement on voting and participation.

23 And so the first, of course, is felony
24 disenfranchisement. So North Carolina has a felony
25 disenfranchisement law and so people who are convicted of

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1 felonies and serve sentences in the community or in prison
2 can't vote.

3 Also, though, even if you haven't been convicted of a
4 felony, there are several studies, including my own work, that
5 are -- discussed the ways that contact with the criminal
6 justice system from police stops to arrests, they also
7 increase -- decrease voter turnout by increasing feelings of
8 punishment and exclusion and political alienation and
9 decreasing government trust, and those factors tend to make
10 people less likely to participate in politics.

11 Q. Still on page 22. What did you find regarding racial
12 disparities in criminal justice involvement in North Carolina?

13 A. So I found that Black people in North Carolina are
14 disproportionately involved in the criminal justice system.
15 Black people make up about 20 percent of North Carolina's
16 adult population, but are 44.1 percent of people who are
17 arrested, 52.9 percent of the people in prison in North
18 Carolina have 44.2 percent of the people serving sentences in
19 the community on probation or parole or post-release
20 supervision.

21 Q. Can these disparities in criminal justice involvement be
22 explained solely by disparities in crime rates, crimes
23 committed by Black and White people?

24 A. No.

25 Q. Is there -- did you cite academic literature regarding

1 that issue?

2 A. Yes. I cite to one example, Racial Differences in Drug
3 Offending and Distribution Arrests. I'm trying to see if I
4 included another citation there as well. Let me look very
5 quickly through here. Sorry, I don't see it.

6 Q. Okay. Does racial discrimination, historical and
7 contemporary racial discrimination play a contributing role in
8 the disproportionate representation of Black people in the
9 criminal legal system in North Carolina?

10 A. Yes. So I cite to research that uses large datasets and
11 rigorous controls to look at the impact of race and racial
12 discrimination both nationwide as well as in North Carolina.
13 And researchers have found that Black people are treated worse
14 by the criminal justice system even after you are controlling
15 for legally relevant factors like criminal history, crime type
16 and other kinds of factors.

17 So, for instance, I cite work by Frank Baumgartner at the
18 University of North Carolina Chapel Hill. He and his
19 co-authors find that Black North Carolina drivers are more
20 likely to be searched and arrested than White drivers, and
21 Black males have the highest likelihood of being searched
22 during a traffic stop in the state; but despite that higher
23 likelihood of being searched, officers were less likely to
24 find contraband when they're searching Black drivers, which
25 shows that they're over-targeting them.

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1 Statistical analyses have also shown that racial
2 disparities exist in bail decisions, sentencing in federal and
3 state courts. Race affects sentencing in North Carolina even
4 after controlling for legally relevant factors such as
5 criminal history, crime type, behavioral factors, a whole host
6 of sentences -- specific -- of variables related to specific
7 cases, as well as demographic variables.

8 There's really nothing left over to explain those racial
9 gaps, except for bias. And researchers -- I cite research
10 that shows that researchers have also shown racial bias in
11 jury selection and deliberation in North Carolina as well.

12 Q. Thank you, Dr. Burch.

13 The defendants' expert, Dr. Taylor, submitted a report
14 responding to your analysis of Senate Factor 5. Did you get a
15 chance to review Dr. Taylor's report?

16 A. I did.

17 Q. Okay. And if you could turn to page 6 of your rebuttal
18 report. Dr. Taylor had made a series of comparisons to
19 support an argument that the very -- all of these various
20 racial disparities in North Carolina are not worse or at least
21 not much worse than comparable disparities nationally.

22 What is your response to that analysis from Dr. Taylor?

23 A. So I thought it was interesting that Dr. Taylor in his
24 report only looks -- he's not disputing any of my numbers;
25 he's not arguing that there are these racial disparities; he's

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1 not arguing that I'm calculating looking at the wrong metrics
2 or anything. Instead, he's just arguing that North Carolina
3 compares favorably on some metrics relative to the rest of the
4 country, but the metrics that he uses aren't consistent across
5 time and analysis. He's kind of just cherrypicking the
6 analysis depending on whether it shows favorability.

7 So his metrics that he cites tend to shift depending on
8 whether they support his argument. So, for instance, when you
9 look at what -- specifically at what he says about educational
10 testing, Dr. Taylor is comparing test score gaps between Black
11 and White North Carolinians and saying they compare favorably
12 with test score gaps nationally. But then for unemployment,
13 he makes a different argument. So he's arguing that statewide
14 Black unemployment in North Carolina is better than the
15 national unemployment rate.

16 If you actually go back and look and compare the size of
17 the racial gap in North Carolina nationally like he did with
18 testing, he doesn't want to talk about that because the size
19 of the racial gap in North Carolina isn't favorable with
20 respect to unemployment.

21 Nationally the Black unemployment rate was 1.66 times the
22 White unemployment rate but that disparity was higher, it was
23 1.85 times higher in North Carolina. So, again, that
24 comparison doesn't work for the -- the comparison he makes for
25 testing doesn't work for unemployment, so he just shifts to

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1 something else.

2 Q. Dr. Burch, just to make sure this is totally clear. Does
3 that mean that if Dr. Taylor -- if a person used the same
4 comparators that Dr. Taylor used in the context of education,
5 which is a comparison of the gap between Black and White
6 people in North Carolina and the gap between Black and White
7 people nationally, if Dr. Taylor had just imported that same
8 comparison into the context of unemployment, it would have
9 shown that North Carolina is actually worse than the rest of
10 the country?

11 A. Yes, so he does a different analysis.

12 Q. And then moving on. What comparators did Dr. Taylor use
13 for income statistics?

14 A. So then -- so when we look at statewide Black income
15 statistics -- so remember with unemployment he's looking at,
16 okay, well, Black unemployment in North Carolina is better
17 than Black employment in the rest of the country. So then he
18 doesn't make that same comparison with income. So now he
19 introduces yet a third metric. So he starts talking about
20 change over time.

21 And again, perhaps that's because when you actually look
22 at Black median income in North Carolina, Black people are
23 worse off in North Carolina compared to the rest of the
24 country with respect to median income. So he's shifting
25 around his comparisons this time looking at differences and

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1 change over time.

2 I found different estimates for household median income
3 by race than Dr. Taylor though, so I'm not sure if those
4 comparisons hold up.

5 Q. Beyond the concerns or problems that you just described
6 with Dr. Taylor's analysis of the state of racial disparities
7 in North Carolina to the state of racial disparities
8 nationally, what is your view of whether that type of
9 comparison has any relevance to the analysis of Senate Factor
10 5 as you understand it?

11 A. So as I understand it, there's no get out of jail free
12 card for Senate Factor 5 if other states also have racial
13 disparities. The Senate factor itself asks about racial
14 disparities in the jurisdiction at issue in the case. And,
15 again, discrimination has happened in many different places in
16 the United States. School desegregation orders have been
17 handed down in 45 states.

18 So I think, again, you might see evidence across states
19 that there are racial disparities that are due to
20 discrimination and other places, but that doesn't excuse the
21 fact that that's also true for North Carolina.

22 Q. Dr. Taylor also argued that you have not sufficiently
23 established in your report that the various racial disparities
24 in education, employment, income, health, all the rest that
25 you have not sufficiently established that those disparities

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1 result from racial discrimination, perhaps they come from
2 somewhere else other than racial discrimination against Black
3 people. What's your response to that contention?

4 A. So throughout my report for all of the factors that I
5 have listed here, I go through and discuss the scholarly
6 research in which scholars have published in peer-reviewed
7 journals evidence of the ways and the different kinds of
8 structural barriers that Black people face nationally and in
9 North Carolina relative to White people.

10 So, for instance, I already discussed historical
11 discrimination with respect to educational attainment and how
12 that relates to the fact that, again, 20 percent of North
13 Carolina's electorate was educated under Jim Crow.

14 I have discussed the ways that school segregation matters
15 for test scores and that school segregation is increasing over
16 type.

17 I've discussed and cited research that shows that teacher
18 credentials, such as subject -- on page 7, teacher
19 credentials, such as subject specific certification in math
20 and English have large effects on student achievement at the
21 high school level. And the same paper goes on to say: The
22 uneven distribution of teacher credentials by race and
23 socioeconomic status of high school students means that
24 minority students and those with less well-educated parents do
25 not have equal access to a high-quality education at the high

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1 school level. That's a study of an academic paper on North
2 Carolina schools.

3 Again, that -- and that paper talks about race but also
4 generational issues such as parental education, which, again,
5 we talked about the histories of Jim Crow in shaping those
6 outcomes.

7 I recently just discussed access to credit and labor
8 market discrimination. I discussed the fact that even after
9 you control for all the things you think should affect
10 criminal justice outcomes, we still see racial gaps, and this
11 has been shown in study after study.

12 So I think I've provided lots of evidence. Again, I'm
13 representing to you that this is a large body of evidence
14 that's showing that -- that it's found there is racial
15 discrimination in both North Carolina specifically and
16 nationally. And, again, Dr. Taylor doesn't dispute any of
17 those studies that I cite.

18 Q. Thank you, Dr. Burch.

19 Let's move on now and switch gears to talk about Senate
20 Factor 6. And the discussion of Senate Factor 6 begins on
21 pages 23 and 24 of your report. For starters, what is Senate
22 Factor 6?

23 A. So Senate Factor 6 asks about the use of overt or subtle
24 racial appeals in political campaigns in the state.

25 Q. Can you summarize the methodology that you used to

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1 evaluate that question, the use of overt or subtle racial
2 appeals in political campaigns in North Carolina?

3 A. So here I looked to the literature in political science
4 and political behavior that talks about both what's an
5 explicit and implicit racial appeal, so the literature and how
6 it defines implicit and explicit racial appeals as well as how
7 we should think about what their effects are and what they
8 look like, what are the markers.

9 And I used that to get a rubric for understanding and
10 being able to identify racial appeals when you see them. And
11 then I looked and I cite here some scholarly literature as
12 well as news -- national and local newspapers, I look at
13 candidate websites, television, other kinds of materials to
14 examine for recent statewide elections as well as some local
15 races, whether there are racial appeals taking place in North
16 Carolina during these campaigns.

17 Q. Based on the body of academic literature that you
18 reviewed, how did you define an explicit racial appeal?

19 A. So in my report I discuss -- again, this is a pretty
20 well -- this is a well-established literature of political
21 science. So explicit racial appeals are just how they sound.
22 An explicit racial appeal either mentions race or a racial
23 stereotype or racial attitude in order to get a voter to vote
24 based on their racial self-interest.

25 Q. And turning to page 24 of your report, can you describe

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1 based on that body of scholarly literature, how did you define
2 an implicit racial appeal and what are the markers of an
3 implicit racial appeal?

4 A. So an implicit racial appeal is a racial appeal that also
5 does the work of making voters think about racial attitudes
6 and concerns. It makes those more salient in the minds of
7 voters, but it does so without referring or mentioning a
8 particular race or racial group or even talking about race at
9 all.

10 Instead, these kinds of implicit racial appeals rely on
11 code words or issues and use images of Black exemplars or
12 another minority exemplar or combination of both of these
13 kinds of factors to make race more salient to voters.

14 Q. On page 25 of the report you describe a 1988 Willie
15 Horton ad targeting the presidential candidate Michael Dukakis
16 as probably the most famous example of an implicit racial
17 appeal. Can you please describe that ad and explain why it's
18 considered such a quintessential example of an implicit racial
19 appeal?

20 A. So in this ad, it's an ad targeting Michael Dukakis --
21 the Dukakis that was run by the George H.W. Bush campaign, and
22 in this ad there's a narrator that talks about Horton who
23 actually goes by William, who's a convicted murderer. How he
24 received multiple weekend furlough passes from prison, during
25 the last of which the narrator informs us he fled, kidnapped a

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1 young couple, stabbed a man and repeatedly raped his
2 girlfriend. And even though they could have conveyed this
3 information without graphics, they elected to superimpose a
4 menacing picture of Horton who's a Black man over the
5 narrative.

6 So the ad incorporates many of the elements that I cite
7 in my report as being characteristics of implicit racial
8 appeals, it invokes a salient stereotype of minority or Black
9 criminality, but it also uses images of a Black exemplar of
10 criminality in order to get people to think about crime and
11 race.

12 Q. On page 26 of the report you discussed a couple of ads
13 from the 1990s here in North Carolina involving Jesse Helms
14 that have been recognized in the literature as implicit racial
15 appeals. Can you talk about the first of those? Describe the
16 ad and explain why based on the definitions of racial appeals
17 that you adopted why is it considered a racial appeal.

18 A. Right. So in this 1990 U.S. Senate election, Jesse Helms
19 used a -- ran an ad against Harvey Gantt, who's Black and the
20 ad said quote, "How did Harvey Gantt become a millionaire. He
21 used his position as mayor and his minority status to get
22 himself and his friends a get out of -- a free TV station
23 license from the government. Only weeks later they sold out
24 to a White-owned corporation for 3.5 million. The Black
25 community felt betrayed, but the deal made the mayor a

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1 millionaire. Harvey Gantt made government work for Harvey
2 Gantt."

3 Now, the reason this ad is an explicit racial appeal is
4 because it specifically mentions race and it explicitly
5 mentions the race of minority candidates and also talks about
6 how the Black community felt betrayed. So it's mentioning
7 race explicitly.

8 But I also want to point out the implicit parts of this
9 ad as well. Here, if you -- if you look at some of the --
10 this ad is actually quite clearly talking about another
11 prominent racial stereotype, which is that Black people are
12 taking undeserved advantage of the government so he's excusing
13 Gantt of using his position as mayor and minority status to
14 basically to get something he doesn't deserve. So it's --
15 that -- it's also calling upon that negative stereotype of a
16 Black person as well.

17 Q. So am I right that this single ad has qualifies as both
18 an explicit racial appeal due to the explicit mentions,
19 multiple mentions of race as well as having markers of an
20 implicit racial appeal by drawing on that racial stereotype of
21 Black people getting undeserved government benefits?

22 A. Yes.

23 Q. Can you describe now the second 1990s Helms' ad there?
24 Describe it and explain why it qualifies as a racial appeal.

25 A. So this is the just the hands ad that's also famous. A

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1 pair of White hands crumples a job rejection letter with the
2 blame placed on a minority candidate getting a job instead.

3 Q. Why does that -- based on the definitions of racial
4 appeal that you adopted from the literature, why does that
5 qualify as a racial appeal, explicit or implicit?

6 A. Again, it's appealing to White candidate -- to White --
7 to White voters saying that minorities again are taking your
8 job.

9 Q. Okay. The defendants' expert, Dr. Critchlow, indicated
10 that that -- that the Harvey Gantt ad you mentioned might be a
11 racial appeal but not a racial appeal to White people;
12 instead, a racial appeal to Black people. What is your
13 response to that?

14 A. So racial appeals don't just have to appeal to White
15 voters or to Black voters. Again, explicit racial appeals are
16 just appeals that try to make race salient in the minds of
17 voters by discussing race specifically, and this ad does that.

18 However, even if -- again, there's this statement about
19 the Black community feeling betrayed, the idea that this would
20 appeal to Black people is undercut by the idea that, again,
21 he's talking -- he's playing on a very prominent stereotype of
22 Black people getting things they don't deserve and taking
23 advantage of the government that, I think, is more likely to
24 appeal to White voters.

25 Q. Okay. Applying the definitions that you adopted from the

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1 literature, did you find examples of explicit and implicit
2 racial appeals in more recent political campaigns in North
3 Carolina?

4 A. I did.

5 Q. Did you find examples of explicit and implicit racial
6 appeals in multiple recent election years across a wide
7 variety of races, including statewide races, congressional
8 races, state legislative races, and local races?

9 A. I did.

10 Q. Let's start with the 2024 gubernatorial campaign between
11 Josh Stein who's White and Lieutenant Governor Mark Robinson
12 who's Black. Did you find racial appeals in that campaign?

13 A. I did. There were several explicit racial appeals made
14 during the course of that campaign and also, of course,
15 famously Lieutenant Governor Mark Robinson was called out by
16 CNN for making several derogatory statements about Black
17 people and other minority groups on -- that he has a very long
18 history of making these kinds of comments.

19 But even within the course of the campaign before all of
20 that came to light, you can see Mark Robinson, Lieutenant
21 Governor Robinson posted to his campaign Facebook page on
22 December 6th, 2023, a fundraising ad where he's got the little
23 button at the bottom that says donate now to win red friends
24 of Markrobinson.com and he says in this racial appeal, "I'm
25 not African American, just American. I stand and pledge

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1 allegiance to the flag of the United States of America, and I
2 kneel before nobody but God Almighty. The liberal media will
3 tell you that makes me a racist and woke Democrats will call
4 me an Uncle Tom. That's why I need your help to defeat my
5 Democrat opponent in the most important race in the nation."

6 Now, in this ad, Lieutenant Governor Robinson is
7 expressly distancing himself from Black voters saying, "I'm
8 not one of them, I'm more like one of you," to White voters.
9 And then he also talks about the fact that the media will say
10 he's a racist, and then he refers to Uncle Tom which is
11 typically a Black person who's a traitor to their race.

12 So he's making these claims and statements again
13 appealing to White voters by saying he's more like them; he's
14 not African American.

15 Q. Is this an explicit or implicit racial appeal based on
16 the definitions you adopted from the literature?

17 A. It's clearly explicit.

18 Q. On page 26 of your report near the bottom you also
19 discussed a speech that Mr. Robinson gave at the 2021 North
20 Carolina Republican Party State Convention. What did he say
21 there?

22 A. He argued that Black people themselves owed money for
23 reparations for slavery and, again, saying that these claims
24 of Black people were -- he doesn't agree with them distancing
25 himself.

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1 Q. Would that qualify as an explicit or implicit racial
2 appeal?

3 A. Explicit.

4 Q. Were Lieutenant Governor's racial appeals both in
5 connection with the 2024 race but also previously during his
6 campaign for lieutenant governor, were those covered by both
7 the North Carolina press, including North Carolina newspapers
8 as well as national press?

9 A. Yes, they were.

10 Q. And did you identify a number of examples of newspaper
11 articles from North Carolina and nationally and other media
12 providing extensive coverage of the racial appeals from
13 Lieutenant Governor Robinson in connection with his races?

14 A. Yes, in my rebuttal report, and I think I may have
15 several examples here as well.

16 Q. Okay. Let's turn to page 29 of your opening report. And
17 sticking with 2024, did you also find racial appeals in the
18 2024 Attorney General race between Jeff Jackson and Dan Bishop
19 who are both White?

20 A. I did.

21 MR. JONES: Can we pull up Plaintiffs' Exhibit No.
22 125 and scroll down. Can you blow up the Facebook post.
23 Let's blow up the entire Facebook post at the top there.

24 BY MR. JONES:

25 Q. Dr. Burch, can you describe what happened here and what

1 we're looking at?

2 A. So this is a social media post by -- I think he was a
3 state representative at the time -- Dan Bishop which basically
4 says that he posts a fake translation of an ad by Jeff
5 Jackson, who's also his opponent for Attorney General,
6 basically saying that he -- that Jeff Jackson -- includes
7 Chinese characters and said it's a translation that says that
8 Jeff Jackson is a TikTok star who wants to make North Carolina
9 soft on crime. It also in the headline above says he's a
10 Chinese social media star and says that this ad -- and he says
11 to translate it for our un-American friends.

12 Q. What qualifies this ad as a racial appeal based on the
13 definitions you adopted?

14 A. So, again, it's talking about -- specifically about
15 Asian, Chinese; but in particular, it's relying on a
16 stereotype that's prominent in literature describing
17 Asian-Americans as perpetual foreigners. So the idea of Asian
18 as being un-American, even though we have Asian-Americans here
19 in the United States who have been here for generations.
20 Again, that's a -- that's a -- that's a tension and a
21 stereotype that is prominent.

22 And, again, the North Carolina newspapers covered those
23 issues, as well as commentary that the ad -- that criticized
24 the ad as anti-Chinese and anti-Asian and that Asian-American
25 groups in North Carolina found it offensive.

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1 Q. And was it also described in the ad as a dog whistle?

2 A. Yes.

3 Q. Turning to page 1 of your supplemental report now, the
4 third report you submitted in the case.

5 Did you find racial appeals in yet another 2024 statewide
6 race which was the North Carolina school superintendent race?

7 A. I did.

8 Q. Go ahead.

9 A. Yes. I did, between Michelle Morrow and Maurice Green.

10 Q. And Michelle Morrow is White and Mr. Green is Black. Can
11 you tell us what happened there?

12 A. So Ms. Morrow made several Facebook posts that produced
13 campaign literature that accused Maurice Green, who is Black,
14 of, quote, "having spent his professional life going after
15 White people and Jews." And also Morrow re-posted a video
16 that accuses Green of advocating racial preferences for Black
17 students, including the statements, no suspensions for Black
18 students and first preference to Black students.

19 And so, again, there were -- there was campaign
20 literature on the website as well with, like, an infographic
21 that had these statements.

22 Q. Did those qualify as explicit or implicit racial appeals
23 based on your definitions from the literature?

24 A. Explicit.

25 Q. Let's talk about 2022. Turning to page 30 of your

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1 opening report. Did you find racial appeals in the 2022 U.S.
2 Senate race between Ted Budd, who's White, and Cheri Beasley,
3 who's Black. And we have a video we're going to play; but
4 just for starters, did you find racial appeals in that race?

5 A. I did.

6 Q. Okay. Could we play the video that's at Plaintiffs'
7 Exhibit No. 254. And Dr. Burch, I'd like to play the video
8 and the question I'm going to ask you after is: Does this ad
9 qualify as a racial appeal; and if so, why.

10 (Video played in open court.)

11 BY MR. JONES:

12 Q. Dr. Burch, does that ad qualify as an implicit racial
13 appeal in your opinion; and if so, what are the salient
14 markers of such an appeal?

15 A. Yes. It's an implicit racial appeal. The ad itself, for
16 instance, has several of the markers that were described in
17 the literature as characterizing racial appeals. For
18 instance, what you saw in the ad is an attempt to discuss a
19 prominent negative stereotype, Black criminality, using
20 photographs of first a newspaper of Black people in orange
21 prison jumpsuits. And then in the next frame, later frames,
22 that ad goes further and even superimposes an image of the
23 Black person in the prison jumpsuit with again an image of the
24 minority candidate, who's Beasley, and it uses that imagery to
25 try and link Beasley to these people; and even the narrator

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1 says she tried to get them off, which I don't think that she
2 was the attorney in that case.

3 So then thinking about the -- even though the ads don't
4 explicitly mention race, they do combine several of the
5 markers. So again, playing to a prominent stereotype of
6 minority criminality, using minority exemplars, tying those --
7 attempting to tie those exemplars to the minority candidate,
8 as well as having -- in this case, Caliendo talks about
9 appealing to -- in this case there's White, all White
10 non-candidate images, so the narrator and his brother who are
11 the victims are White.

12 Q. Ted Budd went on to win that race?

13 A. Yes.

14 Q. Turning to page 32 of your report, another 2022 statewide
15 race. Did you find racial appeals in the primary for that
16 same 2022 U.S. Senate race between Mr. Budd and at that point
17 former Governor Pat McCrory?

18 A. I did.

19 Q. What happened there?

20 A. So -- so also in that campaign cycle, that primary
21 season, an ad was run against former Governor Pat McCrory in
22 which he was accused of pushing textbooks written by radical
23 woke professors pushing critical race theory, teaching our
24 kids to hate America when he was governor.

25 So, again, I have a discussion in my report in the ways

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1 that critical race theory is explicit because it refers to
2 race and also is considered to be an -- a racial ideology
3 about race. So here, accusing him of, again, being on the
4 side of people who are in favor of critical race theories
5 attempting to directly appeal to voters' racial self-interest.

6 Q. Okay. There are other -- did you discuss other
7 instances, other examples of racial appeals you found in other
8 races in 2022 in the report that we're going to skip over for
9 time purposes?

10 A. Yes, I did. 2022, 2020, 2018, at all levels.

11 Q. We'll talk about some from other years. I'm just going
12 to skip the others for 2022 for now.

13 Turning to page 28 of your report. Did you find racial
14 appeals in the 2020 congressional race between Greg Murphy who
15 is White and Daryl Farrow who's Black?

16 A. Yes. In October of 2020 during his re-election campaign,
17 Greg Murphy, Representative Greg Murphy said Vice President
18 Kamala Harris was only picked for her color and her race, is
19 that how we pick our leaders now in America. And that implied
20 that Harris is not qualified to be Black -- be vice president
21 again because of her color and her race. And so that is an
22 explicit racial appeal.

23 Q. Pulling up now, I'm showing you Plaintiffs' Exhibit 243,
24 do you recognize this as a document you cited in your report?
25 This is a local news report from here in North Carolina

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1 titled, "Representative Murphy's now deleted tweet about
2 Senator Harris called racist by North Carolina Democrats"?

3 A. Yes, I see it.

4 Q. And Murphy won that race?

5 A. Yes.

6 Q. Did you also find racial appeals in another 2020
7 congressional race in North Carolina? That was the one
8 between Madison Cawthorn and Moe Davis who are both White.

9 A. Yes. So that one, again, I talk about in the bottom of
10 page 28. So Representative Cawthorn is making an explicit
11 racial appeal designed to appeal to White voters'

12 self-interest where he says -- he put -- after he put up an
13 attack website he said that Moe Davis associates himself with
14 people who want to, quote, "ruin White males."

15 Q. Just for time purposes, I'm not going to have you talk
16 about it, but did you also find for 2018 racial appeals in the
17 North Carolina Supreme Court race involving Anita Earls, who's
18 Black?

19 A. Yes, yes.

20 Q. Turning to page 29 of your report. Did you find
21 instances of candidates of North Carolina recently making
22 racial appeals to actual White supremacists?

23 A. Yes. There have been some instances of that that I
24 discuss in my report.

25 Q. Can you describe those please starting on page 29?

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1 A. So, for instance, Russell Walker who was the Republican
2 candidate for State House District 48 in 2018, asked: What is
3 wrong with being a white supremacist? God is a racist and a
4 White supremacist. And he was also -- as I said in my
5 rebuttal report, he made some comments, some racialized
6 comments in this way earlier as well.

7 Michelle Nix, who was the Vice Chair of the North
8 Carolina GOP, posted to social media ads with pictures of
9 juxtaposing the okay sign which is a White power symbol with
10 the Black power fist as described in the North Carolina
11 newspapers.

12 Q. Then how about Joseph Gibson? This is the last one of
13 the white supremacist ads.

14 A. So he had several incidents and he ran for the State
15 House District 65 in which he used a racial slur against Black
16 people in a tirade against an interracial family, and he also
17 shared certain propaganda videos and linked to manifestos of
18 Neo-Nazi groups.

19 Q. Okay. We've talked about recent statewide races and
20 congressional races and state legislative races from 2024,
21 2022, 2020, 2018.

22 Turning to page 27 of the opening report. Did you also
23 find racial appeals in some recent local elections in North
24 Carolina?

25 A. I did.

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1 Q. I'd like to talk about the first one. And I understand
2 that there's some sensitivity that even saying out loud the
3 things that were said during this race.

4 MR. JONES: So Troy, can we pull up the opening --
5 Dr. Burch's opening report on page 27. And can we blow up the
6 block quote beginning with "tomorrow is going to be." And
7 I'll just leave it on the screen.

8 BY MR. JONES:

9 Q. Dr. Burch, I'm not going to ask you to read it. I
10 understand there's a preference not to.

11 Could you describe what race this was and whether this
12 was a racial appeal, what's on the screen?

13 A. So in this race it was for Columbus County sheriff and
14 the candidate Jody Greene was recorded making these certain
15 comments in the context of the campaign, and he won
16 re-election by a substantially wider margin after he made
17 these comments than he won in the last race.

18 Q. So Mr. Greene was already the sheriff of Columbus County
19 when he made these comments? This was during his race for
20 re-election?

21 A. Yes.

22 Q. And after it was reported in the news that he had made
23 these comments, the ones that are on the screen, you're saying
24 he won re-election by an even wider margin than he had come
25 into office?

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1 A. Yes.

2 MR. JONES: And the comments are in the middle of
3 page 27 of Dr. Burch's opening report for the record.

4 BY MR. JONES:

5 Q. One more. What about Eric Whitfield's victory and
6 comments in the Onslow County Board of Education race in 2020?
7 What happened there?

8 A. Eric Whitfield referred to Black people on his -- on an
9 online post. He wrote that the head of the Onslow County
10 NAACP both controls the ignorant darkies in his community.

11 Q. And is that an explicit racial appeal or implicit?

12 A. Explicit.

13 Q. And he won after posting that?

14 A. Yes.

15 Q. The defendant's expert, Dr. Critchlow, submitted a report
16 responding to your analysis of racial appeals, explicit and
17 implicit, in lots of recent North Carolina elections at all
18 levels. Did you get a chance to review Dr. Critchlow's
19 response to your analysis on racial appeals?

20 A. I did.

21 Q. Okay. Can we turn to page 10 of your rebuttal report.
22 So Dr. Critchlow had noted a few of the candidates, some of
23 the candidates that you discussed having made racial appeals
24 during their campaigns went on to lose their races. What are
25 your responses to that?

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1 A. So Dr. Critchlow actually mischaracterizes and says that
2 making a direct racial appeal is not a winning campaign
3 strategy in North Carolina, whereas I just cited several
4 people who either held elected office or been elected to --
5 won primaries and won general election campaigns after making
6 these kinds of claims, including -- again, Lieutenant Governor
7 Mark Robinson had a long history of making these comments even
8 during his campaign to become lieutenant governor and then he
9 won his primary last year after making several racially
10 charged statements and posting the ad that I showed you
11 earlier.

12 Senator Ted Budd is the Senate -- sitting U.S. Senator;
13 both Madison Cawthorn and Greg Murphy won those races. And so
14 Dr. Critchlow really only discusses two candidates that were
15 disavowed by the Party out of all of the ones that I mentioned
16 here.

17 Q. And were those the candidates who had openly promoted
18 White supremacy?

19 A. Yes. But even then Dr. Critchlow acknowledges that
20 Walker won the Republican Primary that year, but then falsely
21 says that his views weren't public, but of course, they were
22 as I show here.

23 Q. Regardless of whether the candidates win or lose, do you
24 believe that just the mere making of these racial appeals
25 still bears relevance in connection with the analysis of

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1 Senate Factor 6?

2 A. Yes. To my mind Senate Factor 6 is really about the
3 extent to which candidates still find it useful to have -- to
4 appeal to a voter's racial self-interest in order to win an
5 election. And these examples that I provided at elections,
6 most recent statewide elections, many of the most recent
7 statewide elections in North Carolina for the highest offices
8 in the state, like governor and senator, I found these racial
9 appeals for at all levels of government, U.S. Congress, State
10 House and Legislative District, local races, school board
11 elections, and I think I found, again, across the series of
12 reports, I found them for 2024, 2022, 2020, 2018. So, again,
13 these are important and show that even in very prominent races
14 candidates are still finding useful to appeal to race to win
15 campaigns.

16 Q. And still on page 11 of your report, turning to page 11,
17 rebuttal report.

18 Dr. Critchlow had argued that your analysis reduces
19 legitimate policy differences between candidates to racial
20 animosity and he discusses policy differences on issues like
21 crime and immigration policy. What is your response to that?

22 A. So two things: First, he's referring to the idea that
23 implicit racial appeals do rely on code words or stereotypes
24 of minority in issues such as crimes or immigration.

25 But in the -- most of the implicit -- most of the racial

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1 appeals that I discuss in my reports are explicit; they are
2 not implicit. And also to the extent that I do discuss
3 prominent stereotypes, and I think both cases crime, I'm doing
4 it again according to the rubric where it's not just relying
5 on discussion of immigration or crime or whatever by itself,
6 I'm also looking at other features of the ad such as the use
7 of those code words or stereotypes in conjunction with a
8 minority exemplar.

9 So, again, it's a mischaracterization of my report to
10 ignore all of the explicit racial appeals and also ignore the
11 structure of -- again, I'm using rigorous standards to think
12 about these ads have multiple features that would characterize
13 racial appeals, not just the code words.

14 Q. Dr. Critchlow also conducted a newspaper analysis which
15 led him to conclude that there have been vanishingly few
16 examples of racial appeals by candidates on either side of the
17 aisle in North Carolina in recent years.

18 Just for starters, do you agree with Dr. Critchlow's
19 methodology and his conclusions from the newspaper analysis?

20 A. No.

21 Q. What is your understanding of Dr. Critchlow's
22 methodology, what he did in the newspaper analysis?

23 A. So for this newspaper analysis, Dr. Critchlow doesn't
24 follow any standard methodology for conducting a content
25 analysis of newspapers or how you would analyze content of

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1 anything else.

2 So typically, when you're going to do a content analysis,
3 you do as broad a search as possible. However, Dr. Critchlow
4 doesn't search any national publications and he relies only on
5 a few select North Carolina newspapers, and some can't -- set
6 of campaign websites, he doesn't say which ones. And so he
7 cites no support for his claims that local newspapers and
8 candidate websites are the best sources or the only sources.
9 He also doesn't provide any evidence that they are uniform or
10 reliable guide to campaigns.

11 Those of us who actually do content analysis are aware of
12 literature, for instance, that shows that newspapers only
13 cover about half of events that would be considered newsworthy
14 in any given place or jurisdiction. So newspapers, again,
15 have biases in coverage as well.

16 So Dr. Critchlow then -- he ignores other sources of
17 information, like national press, local nonprint media, so TV,
18 other candidates and -- and other kinds of websites as well.
19 He's conducting -- he's conducting his content analysis using
20 a very limited source of data, and it's just a few local news
21 outlets.

22 Q. And then, Dr. Burch, having selected just a few North
23 Carolina newspapers and limiting his search in that way, what
24 about Dr. Critchlow's selection of keywords, the keywords that
25 he would use to search?

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1 A. He doesn't follow best practices with respect to a
2 content analysis at all. So when you are going to conduct a
3 content analysis typically you're going to do some work
4 beforehand to look at previous literature, as I do in my
5 report or some other kind of pretesting to figure out, okay,
6 what are -- what should be considered is keywords.

7 Dr. Critchlow doesn't do any of that work. He doesn't
8 attempt to define a priori what racial appeal in a campaign is
9 or how he would define it. He doesn't even -- he just looks
10 at two keywords related to race, which are racism and bigotry.
11 He doesn't look at similes; he doesn't look at synonyms; he
12 doesn't look at anything. He doesn't look at racist, for
13 instance, just racism. So it's just a very limited set of
14 keywords that he's searching.

15 So even as interesting as that is, he's basically arguing
16 that he can identify racial appeals as any time a newspaper in
17 North Carolina covers a racial -- covers a campaign incident
18 and says that the words racism or bigotry are used. It's a
19 very limited definition that -- there's no support for that in
20 the literature.

21 Q. So Dr. Burch, based on how you understand Dr. Critchlow's
22 methodology, if the New York Times had run a story reporting
23 that a North Carolina candidate, political candidate had made
24 statements that were described as racism, is it your
25 understanding that would -- Dr. Critchlow's analysis would not

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1 pick that up because racism was one of his keywords but he
2 excluded the New York Times from his search?

3 A. Yes.

4 Q. And if a North Carolina newspaper that was one of the
5 ones that Dr. Critchlow included in his search had written a
6 story about the same statements by the same political
7 candidate and had described them as racist, it also would not
8 be picked up by Dr. Critchlow's search because he searched
9 that newspaper but he only searched the word racism not
10 racist?

11 A. For instance, anything; dog whistle, racist, he wouldn't
12 -- he would miss that.

13 Q. So there could have been -- and I think you identified in
14 your report, in fact, there were many instances of racial
15 appeals by North Carolina political candidates that were
16 covered extensively in both national and North Carolina press,
17 including North Carolina newspapers, and described as racial
18 or racially insensitive or dog whistles, various synonyms or
19 similes, but he didn't -- he didn't pick up any of those?

20 A. That's right. And so it means, of course, that in just a
21 few of the races that he characterize as not finding any of
22 these newspaper articles, racial appeals, once you add back in
23 all the ones that he missed, his analysis is actually similar
24 to mine -- would be similar to mine in terms of what we found.

25 Q. Do you believe that Dr. Critchlow's analysis supports his

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1 conclusion that there have been vanishingly few examples of
2 racial appeals by candidates on either side of the aisle in
3 North Carolina in recent years?

4 A. No.

5 Q. Stepping back before we move on to a new topic, can you
6 just summarize for the Court your ultimate conclusion
7 regarding both the existence and the extent of explicit and
8 implicit racial appeals in recent North Carolina elections?

9 A. Yes. Again, as I said before, I examined many recent
10 statewide elections, including for governor, Attorney General,
11 N.C. State school superintendent. The most recent U.S. Senate
12 race. I've also looked at congressional races, state
13 legislative races, local races and, again, these campaigns
14 have taken place all over the state in multiple recent
15 election cycles, 2024, 2022, 2020, 2018, and I found racial
16 appeals in all of these races.

17 Q. Thank you. Switching gears, you also analyzed in your
18 opening report Senate Factor 7. Turning to page 32 of your
19 opening report. Briefly, what is Senate Factor 7?

20 A. Senate Factor 7 is the extent to which members of the
21 minority group have been elected to public office in the
22 jurisdiction.

23 Q. Did you find that Black people are underrepresented in
24 some offices in North Carolina?

25 A. Yes. Statewide the -- no Black people have been elected

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1 to governor, Attorney General, or U.S. Senate, and Lieutenant
2 Governor Mark Robinson was the first person in 2020 to be
3 elected as lieutenant governor. Eight people have been
4 elected to the U.S. House since 1900; 11 total Black people
5 that is.

6 Q. Eleven Black people have been elected to the U.S. House
7 of Representatives from North Carolina ever and only eight of
8 those are since the year 1900?

9 A. Yes.

10 Q. Okay. What did you find with respect to the proportion
11 of Black members in the North Carolina General Assembly
12 relative to the overall Black share of the state's population?

13 A. So --

14 Q. The numbers in your report are from before the 2024
15 election, but if you know it you can just describe what the
16 situation is today.

17 A. Yes. So in my -- I did submit a supplement. So in the
18 2024 General Election, 38 Black people were elected to the
19 State House and Senate, and so that's -- for the House, State
20 House and the -- 10 from the State Senate, that's at parity
21 with the population as a whole.

22 Q. And I may have misheard, but can you just repeat to make
23 sure the record is clear. How many Black people were elected
24 just to the State House?

25 A. Twenty-eight.

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1 Q. Great. Thank you.

2 At a more granular level, did you analyze the performance
3 of Black Senate candidates in Senate districts that actually
4 contain the Black-Belt counties at issue here?

5 A. I did.

6 Q. And you can go back to page 33 of your opening report for
7 this analysis. What did you find on this issue?

8 A. So I looked over time and the counties at issue in this
9 case traditionally have been spread across two majority-Black
10 state Senate districts. So from 1992 to 2000, nearly all of
11 those counties were split between the Second and Sixth
12 districts which were both about 60 percent Black, give or
13 take, 59.46 and 59.23 percent Black respectively.

14 Then from 2002 to 2016, these counties were spread across
15 the Third and Fourth State Senate Districts, both of which
16 were majority Black as well.

17 In 2018 and 2020, the counties were still mostly spread
18 across the Third and Fourth districts, but they were no longer
19 majority Black. SD4 was still majority-minority. And so the
20 Black population was still high enough in those more favorable
21 contests that Black people in this area, voters sent Black
22 representatives to the North Carolina State Senate for
23 decades.

24 But, however, beginning with the 2022 cycle for the first
25 time, none of the counties were in districts where there were

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1 more than 43 percent Black population and the Black candidate
2 in the district containing most of those counties, District 3
3 lost.

4 Toby Fitch whose district had included Edgecombe and
5 Halifax lost in 2022 after his district was redrawn to no
6 longer including any Black-Belt counties, and it was majority
7 White.

8 And so -- and everywhere but Edgecombe County, the people
9 in those counties were represented by White Senators.

10 District 5, which includes Edgecombe, did elect a Black
11 senator and it's a majority-minority district.

12 Q. Is a fair takeaway from that that when Black senate
13 candidates have won in the Black Belt, it's typically been in
14 majority or near majority-Black districts and when Black
15 candidates have run in the Black-Belt counties in districts
16 with lower BVAP percentages they have typically lost?

17 A. Yes. So typically in this area as well as other parts of
18 the state -- other parts of the state and statewide, the
19 pattern is that Black candidates tend to do best in
20 majority-minority and majority-Black contests and Black
21 candidates are much more likely to lose in majority White
22 contests.

23 Q. And to save time, can I just ask you at a general level,
24 did you analyze recent State House primary elections in the
25 Black-Belt region at issue in this case and find that they

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1 show a similar pattern in terms of Black House candidates more
2 typically winning in majority or Black or majority-minority
3 districts but losing when they run in districts with the
4 Black-Belt counties that have lower BVAP percentages?

5 A. Yes.

6 Q. And then turning to your supplemental report, the third
7 page.

8 Did you conduct a similar analysis of the results in the
9 House and Senate districts that contain the Black-Belt
10 counties in 2024 and find that they too continue to follow a
11 similar pattern of Black candidates winning in districts with
12 majority or near majority in Black population but losing when
13 they run in Black-Belt districts with lower BVAP percentages?

14 A. I did.

15 Q. And did you also in your supplemental report conduct an
16 analysis of the success or failure of Black candidates for
17 House and Senate seats across the entire state and find that
18 they largely followed the same pattern?

19 A. I did.

20 Q. So in both House and Senate races both in counties
21 containing -- in districts containing Black-Belt counties and
22 on a statewide basis, there's been a consistent pattern that
23 Black candidates win in majority Black or near majority-Black
24 districts but most often lose when they run in districts with
25 lower BVAP percentages?

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1 A. Yes. For instance, in the State House this past year of
2 the 28 Black people elected to the State House, 22 were
3 elected from majority-minority or majority-Black districts.
4 Of the 24 Black candidates who lost State House races this
5 year, 19 lost to White candidates in White majority districts;
6 two others lost to minority candidates, majority-minority
7 districts, one lost to a minority candidate in a minority --
8 majority White district, and only two lost to a White
9 candidate in a majority-minority district, so the consistent
10 pattern again is most were losing to White candidates in
11 majority White districts.

12 Q. Thank you, Dr. Burch.

13 Let's turn to Senate Factor 8. So in your rebuttal
14 report starting at page 23 you offered a response to Dr.
15 Taylor's analysis of Senate Factor 8. And for starters,
16 please remind us, what is Senate Factor 8?

17 A. Could you give me that page number again?

18 Q. That's page 23 of your rebuttal report.

19 A. Yes. Senate Factor 8 asks about the discussion of
20 responsiveness of the North Carolina policymakers -- sorry.
21 Asks about the responsiveness of North Carolina public
22 officials to the particularized needs of the minority
23 community.

24 Q. And what minority community is that here?

25 A. Here, Black people.

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1 Q. So Senate Factor 8 is asking about the state government's
2 responsiveness to the particularized needs of the Black
3 community?

4 A. That's right.

5 Q. Dr. Taylor had begun his analysis of this Senate factor
6 with a discussion of the responsiveness of North Carolina
7 policy, quote, "to its general population."

8 Is that, in your opinion, a helpful or responsive piece
9 in analyzing Senate Factor 8?

10 A. No. That literature doesn't at all reference
11 responsiveness to minority communities.

12 Q. Dr. Taylor provided some examples of expenditures enacted
13 into law that targeted Black-Belt counties or that were
14 directed to nonprofits focused on African American interests.

15 Do those citations establish that the General Assembly
16 has been responsive to the particularized needs of Black North
17 Carolinians?

18 A. No. For instance, if you actually flip through those
19 budget reports there are dozens of capital projects and grants
20 to cities and nonprofits in the state budgets that Dr. Taylor
21 cites, but he doesn't -- unlike in his -- the way that he's
22 trying to make these claims in the rest of his reports about
23 broader context, he doesn't talk about, for instance,
24 whether -- he doesn't provide any information about whether
25 those grants are provided at any kind of rate that's

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1 commensurate with other places in the state or even with on a
2 per capita bases. He just provides a list of them and doesn't
3 put them in any context. It could still be underfunded, black
4 people in this region relative to the rest of the state, we
5 just don't know because he doesn't provide any information.

6 Q. You also discussed evidence you found that Dr. Taylor did
7 not mention that the General Assembly has been less than
8 responsive to the needs of Black North Carolinians. Can you
9 describe that evidence?

10 A. Yes. So I discuss here that he does not look at recent
11 court cases. For instance, in 2016, North Carolina's 2013
12 Election Law known as HP 589 was struck down for intentionally
13 targeting African Americans, quote, "with almost surgical
14 precision."

15 I also discuss some of the racial gerrymandering of
16 legislative districts and congressional districts that dilute
17 the voting power of African Americans as well.

18 Q. Specifically, were you citing here court decisions from
19 the last decade that struck down both the state's legislative
20 districts and congressional districts as racial gerrymandering
21 designed to dilute the voting power of African American voters
22 specifically?

23 A. Yes.

24 Q. Do those legislative activities that you've just
25 discussed respond to the particularized needs of Black voters

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1 in North Carolina?

2 A. No.

3 Q. You also offered a response to Dr. Taylor's analysis of
4 Senate Factor 3. And what is Senate Factor 3?

5 A. Senate Factor 3 discusses the extent to which the state
6 or political subdivision has used voting practices or
7 procedures that tend to enhance the opportunity for
8 discrimination against the minority group, such as unusually
9 large election districts, majority vote requirements, and
10 prohibition against bullet voting.

11 Q. And Dr. Taylor's conclusion with respect to Senate Factor
12 3 was that North Carolina has basic election practices that
13 are typical of the country. What was your response to that?

14 A. Again, I thought it was an odd argument because, again,
15 Dr. Taylor here is ignoring the fact that those election
16 practices -- practices are what he described as, quote,
17 unquote, "typical," because of the actions of courts, not
18 because of the actions of the legislature.

19 They are typical because courts have acted to prevent the
20 legislature from taking actions that, again, were described
21 as, quote, "intentionally targeting African Americans" with,
22 quote, "almost surgical precision," and also the racial
23 gerrymandering and other -- and striking down the
24 congressional districts as well.

25 Q. Were some of those laws enacted by the General Assembly

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1 that were eventually invalidated by the courts for
2 discriminating against Black people, were some of those laws
3 actually used in elections for years before the court struck
4 them down?

5 A. Yes. So people were forced to vote, especially in some
6 of these districts that were later found to be racially,
7 again, to dilute the power of Black voters.

8 Q. Lastly, Dr. Taylor had argued that, quote, "When it comes
9 to statewide racial disparities in voting, North Carolina
10 performs better than the country as a whole."

11 What's your response to that analysis from Dr. Taylor?

12 A. So Dr. Taylor doesn't account for differences across
13 states that might affect voter turnout in a given year, but he
14 does show that there's a large gap in voter turnout between
15 Black and North Carolinians, about an 8.1 percentage point
16 gap. He also -- there's also a turnout gap of about six
17 points in presidential election years as well.

18 MR. JONES: Thank you, Dr. Burch. No more
19 questions. If it's okay, I'll move the exhibits during the
20 redirect.

21 THE COURT: Thank you. Cross-examination.

CROSS-EXAMINATION

22
23 BY MR. LEWIS:

24 Q. Dr. Burch, good afternoon. Patrick Lewis here on behalf
25 of the Legislative Defendants. It's nice to see you again.

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1 A. Good afternoon.

2 Q. I'd like to turn to your analysis of Senate Factor 5 on
3 page 23 of your opening report, which is PX21.

4 A. Twenty-three, you said?

5 Q. Page 23 of your opening report.

6 THE WITNESS: Okay. Before you start, can I ask, is
7 this water?

8 THE COURT: It is.

9 BY MR. LEWIS:

10 Q. Okay. Page 23.

11 A. I have it, yes.

12 Q. Excuse me. I meant to say page 3. Excuse me. I
13 apologize.

14 A. Yes. I'm on page 3 now.

15 Q. Perfect. And do I understand that the purpose for
16 analyzing racial disparities between Black and White North
17 Carolinians with respect to the socioeconomic factors you
18 describe, that the point of that was to tie those factors to
19 voter turnout; is that right?

20 A. I wasn't asked to -- I don't see where I mentioned voter
21 turnout here in terms of whether I was evaluating voter
22 turnout.

23 Q. I'm going to apologize to you again. I actually did have
24 page 23 correct, so let's go back there. I apologize. That's
25 my mistake.

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1 A. Okay.

2 Q. So the first sentence of your concluding paragraph which
3 is the second full paragraph on the page. Do you see where
4 you write, "As I have shown in this section, there are
5 important racial disparities between Black and White North
6 Carolinians with respect to numerous factors that research has
7 shown affect voter turnout." Do you see that?

8 A. Yes.

9 Q. But your opening expert report we have up on the screen
10 as 23, you don't analyze the extent to which any of the
11 socioeconomic disparities that you identify contribute to any
12 observed voter turnout disparities between Black and White
13 North Carolinians, does it?

14 A. So I discuss voter turnout in two ways here: The first
15 is what I'm mentioning there in that conclusion, which, of
16 course, discusses the research literature that ties each of
17 these factors; education, income, so forth and so on, criminal
18 justice to voter turnout. I also mention it briefly, as I
19 just did here in my response to Dr. Taylor, there is a turnout
20 gap. I cite the one voter turnout by race on page 25 of my
21 rebuttal report with respect to North Carolina State Board of
22 Elections, as well as he finds a gap in turnout as well.

23 So, again, I'm here showing the disparities that I
24 discuss are, again, relevant to political scientists have
25 found, for instance, that education shapes voter turnout, and

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1 I've shown and discussed in my rebuttal report that there are
2 turnout gaps in North Carolina.

3 Q. But Dr. Burch, just to be very clear, in your opening
4 report, you don't even report the existence or the magnitude
5 of a voter turnout disparity between Black and White North
6 Carolinians, do you?

7 A. No. I wasn't asked to.

8 Q. You weren't asked to.

9 And, in fact, in neither of your opening nor your
10 rebuttal reports, do you even calculate the voter turnout
11 disparity in the Black-Belt counties?

12 A. Again, I'm just relying on Dr. Taylor and responding to
13 his data.

14 Q. And to be clear, your response when you calculate the
15 turnout disparity by race on page 25 of your rebuttal, you're
16 not doing that to respond to an argument relating to Senate
17 Factor 5; is that right?

18 A. He has it, I believe, in Senate Factor 3.

19 Q. Okay. All right. So, for example, I couldn't look at
20 your expert report, Dr. Burch, and see an analysis of the
21 degree to which educational attainments contributed to any
22 observed voter turnout differences in North Carolina today; is
23 that right?

24 A. No. I don't discuss voter turnout in that section,
25 except for the previous literature that finds, again, the

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1 importance of voter turnout to -- sorry. Education to voter
2 turnout, for instance.

3 Q. I see. All right. Did I hear you correctly in direct
4 examination that you've served as a testifying expert on the
5 Senate factors in several pieces of litigation?

6 A. I have.

7 Q. And you've studied Senate Factor 5 in several of those
8 cases; is that right?

9 A. That's right.

10 Q. Have you ever opined that a state had no racial
11 disparities between Black and White residents in the
12 socioeconomic areas that you studied in this case?

13 A. I have not.

14 Q. And, in fact, those disparities, at least to some extent,
15 are a national problem, aren't they?

16 A. To varying degrees, but again, I think national
17 comparisons are difficult to make here.

18 Q. Sure. All right. And -- okay. And Dr. Burch, just for
19 background, are you -- you're aware that the -- what we call
20 the Senate factors were contained in a Senate Judiciary
21 Committee report that accompanied certain amendments to the
22 Voting Rights Act passed in 1982?

23 A. That's right.

24 Q. Okay. So if we wanted, for example, to measure
25 improvement in the socioeconomic condition since 1982, since

1 that Voting Rights Act amendment was passed, wouldn't we need
2 to compare contemporaneous data or older data to the more
3 recent data on socioeconomic factors that your report
4 analyzes?

5 A. So you're asking me a couple of questions here, so I'm
6 going to break them apart.

7 So the first one is that, again, I think it's more of a
8 legal conclusion as to whether 1982 is relevant. I mean, you
9 could also look at the -- cite from the 2006 re-authorization.

10 The second point of the VRA, the second point I'd like to
11 make that I think is really important is that I do talk about
12 and compare change over time. For instance, when I talk about
13 racial educational segregation which has gotten worse over
14 time. And so, again, some of these indicators are moving in
15 the wrong direction.

16 Q. Okay.

17 A. Incarceration is another one.

18 Q. For example, for all of the educational analyses that you
19 perform that are -- it's either coming out of an ACS survey or
20 you have that Stanford survey as well, but it's all coming
21 from a snapshot in time; is that right?

22 A. I believe Figure 1 looks at some data over time in test
23 score gaps.

24 Q. Okay.

25 A. Again, that figure also shows that even a year-over-year

1 improvement -- decline -- worsening of the test score gap, as
2 I noted earlier, hours ago.

3 Q. Now, in that Figure 1, though, isn't it true that the
4 figure from the source you got it from actually goes all the
5 way back to the 1992-1993 academic year?

6 A. It does.

7 Q. And you're showing and analyzing the data only from 2008
8 forward?

9 A. Yes. I believe that is, what, more than 15 years of
10 data. Close -- about -- 16 years of data.

11 Q. So if we look at, for example, Figure 4 appearing on
12 page 12 of your opening report, PX21. If we can go there. So
13 here, you rely on the five-year ACS survey; is that right?

14 A. That's right.

15 Q. So that's looking at I believe 2017 to 2021?

16 A. Yes, I think that's right.

17 Q. All right. But at the time you issued your report, there
18 was actually more recent five-year estimates available than
19 the 2021 set you rely on; is that right?

20 A. I'm not sure. So when I did most of these analyses, I
21 actually did them for the PI hearing and did not update them.
22 So I'm not sure if the more recent data were available when I
23 actually calculated these tables.

24 Q. Okay. I'd like to turn now to page 5 of your rebuttal
25 report, Professor Burch, which is PX117. And here, you have a

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1 criticism of Dr. Taylor's discussion of UNC enrollment data
2 because it didn't discuss disparities across enrollment within
3 campuses in the system; do you see that?

4 A. I do.

5 Q. When you wrote that report, you didn't know what the
6 North Carolina promised tuition scholarship was, did you?

7 A. I don't mention it here.

8 Q. And do you understand that that particular scholarship
9 lowered tuition at four universities in the UNC system to \$500
10 per semester?

11 A. Yes, I think I recall that.

12 Q. Okay. And do you agree that two of the UNC system
13 universities with tuition available for \$500 per semester are
14 historically Black colleges or universities?

15 A. Yes.

16 Q. Okay. And just for the record, would you agree those are
17 Elizabeth City State and Fayetteville?

18 A. I don't know off the top of my head.

19 Q. So you'd agree it's possible that a student admitted -- a
20 Black student to be precise -- admitted to UNC Chapel Hill
21 could potentially make the choice to enroll in a different
22 university within the UNC system either to take advantage of
23 that \$500 per semester scholarship or perhaps because the
24 school was an HBCU; is that right?

25 MR. JONES: Objection. It calls for speculation.

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1 THE COURT: Overruled.

2 THE WITNESS: I would say it's unlikely.

3 BY MR. LEWIS:

4 Q. Okay. Do you know what the tuition is for UNC Chapel
5 Hill this year?

6 A. I don't.

7 Q. Okay. Would you agree it's probably a lot more than \$500
8 per semester?

9 A. Yes.

10 Q. And would you agree that particularly if you were a
11 low-income student that -- being able to attend a four-year
12 university for \$500 per semester would be a pretty beneficial
13 thing?

14 A. Again, I don't think that the calculation of value, for
15 instance, is really just -- is -- again, you're comparing
16 apples to -- apples to oranges here in terms of prestige, in
17 terms of other offerings with respect to what students can be
18 provided at UNC Chapel Hill versus others.

19 For instance, I assume, again, because it's the flagship,
20 and I at least know and have given talks in political science
21 there before that the professors there are nationally ranked
22 and, again, have national reputations. I'm not sure if that's
23 the case at some of these smaller universities.

24 So if a student is balancing on something such as
25 reputation, for instance, access to alumni, other factors that

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1 you see the Supreme Court considering in McLaurin or Sweatt,
2 they may actually still think that paying \$25,000 for the
3 University of North Carolina Chapel Hill is a better value
4 than \$500 at a lesser-known campus.

5 Q. But you'd agree it's possible that a student could
6 potentially decide differently, right?

7 A. Again, I said I think it's unlikely.

8 Q. But not something that you studied for your expert work
9 in this case, right?

10 A. No. I'm just responding because you asked me.

11 Q. Now, Dr. Burch, you'd agree that in some of your prior
12 expert witness work you've analyzed educational funding
13 disparities as part of your Section 5 analysis; is that right?

14 A. Yes.

15 Q. But your report in this case doesn't analyze, for
16 example, whether North Carolina has a funding disparity
17 between White majority and non-White majority districts,
18 right?

19 A. I think the only funding disparities that I talk about
20 here are -- sorry. Yes. I do talk about them at page 6 about
21 data. State White students make up only 49.7 percent of North
22 Carolina's K through 12 students but receive 64 percent of
23 vouchers for private school.

24 I'm just going to take a minute.

25 I also talk about other kinds of resource differences,

1 again, such as teacher credentials, studies of teacher
2 credentials across -- and disparities there. So that's where
3 the literature is focusing in this case.

4 Q. I see. But, in fact, there is data showing that in North
5 Carolina majority -- majority -- non-White districts, in fact,
6 can get more funding than majority White districts on a per
7 pupil basis; isn't that right?

8 A. Yes. I do think that there were -- there were some moves
9 to begin fully funding some of these commitments to poorer
10 districts in recent years, yes.

11 Q. Okay. Okay. I have one question for you on Figure 7 on
12 page 16 of your opening report, PX21.

13 A. 7, 16?

14 Q. Page 16, yes, ma'am.

15 A. I have it.

16 Q. Perfect. All right. And I believe you testified on
17 direct examination; you made the point that the Black median
18 household income within the 11 counties on this chart was
19 lower than the statewide average for Black-led households; is
20 that correct?

21 A. Yes.

22 Q. Okay. Would you agree that in each of these 11 counties
23 that the White median household income in these 11 counties is
24 also lower than the statewide average for White-led North
25 Carolina households?

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1 A. Yes.

2 Q. Okay. Moving on to homeownership in North Carolina, I'd
3 like to turn to page 18 of your opening report. I'm looking
4 at that second sentence on the first full paragraph. You
5 write, quote, "For instance, homeownership is important
6 because residency requirements have been shown to reduce voter
7 registration and turnout." Do you see that?

8 A. I do.

9 Q. And I understand your position to be that the linkage
10 between residency and voter registration and turnout had to do
11 with the burden to maintain one's registration; is that right?

12 A. Yes. When you have to move around either forcibly or
13 voluntarily.

14 Q. So the idea is just that if you move a lot, every time
15 you move you have to re-register, right?

16 A. Yes. And movers tend to be more mobile.

17 Q. Okay. Understood. But your report did not study the
18 ways in which people can register to vote in North Carolina;
19 is that right?

20 A. No.

21 Q. So, for example, you didn't analyze the fact that North
22 Carolina allows 18 days of same-day registration, right?

23 A. I was aware of it.

24 Q. You were aware, but you didn't analyze how that would
25 affect the linkage between homeownership and voter

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1 registration and turnout; is that what you're telling me?

2 A. So, again, I do think that the length of time in terms of
3 you can go to the polls in -- during a certain period to do
4 same-day registration, but, again, you might get your driver's
5 license changed first. So, again, maybe those kinds of
6 getting your documents and everything else in order still is a
7 cost that needs to be accounted for when we're thinking about
8 the effort it takes to vote.

9 Q. Sure. And to your knowledge, does North Carolina -- you
10 mentioned changing your -- you know, changing the address on
11 your driver's license. Do you know if North Carolina allows
12 you to update your voter registration when you update your
13 driver's license?

14 A. Yes. Through Motor Voter.

15 Q. And did you analyze the extent of North Carolina law
16 permitting online voter registration?

17 A. I did not. Again, I'm just saying that someone who moves
18 frequently has to do -- take these steps more frequently.

19 Q. Okay. For your expert work -- expert report in this
20 case, Dr. Burch, you didn't study the length of rental periods
21 in northeastern North Carolina, did you?

22 A. No.

23 Q. So you don't know if people in northeastern North
24 Carolina, you know, tend to change -- tend to move every year,
25 every five years; you don't know; is that right?

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1 A. That's right. Just in general renters tend to move more
2 frequently than homeowners.

3 Q. I understand. Next you discuss discriminatory lending
4 practices in a matter involving the First National Bank of
5 Pennsylvania. Do you recall that?

6 A. Yes. That's an example I provide.

7 Q. Okay. Do you know how much mortgage lending with First
8 National Bank of Pennsylvania was providing in North Carolina?

9 A. I imagine it's probably a small part of the mortgage
10 market in the state.

11 Q. Okay. All right.

12 A. Again, I'm -- here, this is just an example of what I
13 describe in the line before as a more general practice that's
14 been shown to be the case nationally.

15 Q. Okay. And so you didn't find any recent examples of
16 discriminatory redlining or other mortgage lending practices
17 in the 11 Black-Belt counties, correct?

18 A. I'd have to look specifically if that expanded beyond
19 those neighborhoods in the cities that I list there. But in
20 terms of recency, this settlement I believe was from last
21 year.

22 Q. And you'd agree that Charlotte and Winston-Salem are not
23 contained in the 11 Black-Belt counties we're talking about,
24 right?

25 A. That's right.

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1 THE COURT: Time for a 15-minute recess.

2 (The proceedings were recessed at 3:30 p.m. and reconvened
3 at 3:45 p.m.)

4 THE COURT: You may continue the cross-examination.

5 MR. LEWIS: Thank you, Your Honor.

6 BY MR. LEWIS:

7 Q. Dr. Burch, I'd like to turn now to page 19 of your
8 opening report, PX21.

9 And in this page, you include a discussion about how
10 people with disabilities are also less likely to vote. Do you
11 see that?

12 A. Yes, at the very top of the page.

13 Q. Okay. But you didn't include in your report any analysis
14 of curbside voting in North Carolina; is that right?

15 A. I did not.

16 Q. Okay. And you also claim on the same page, 19 of your
17 report, that there was essentially more Black North
18 Carolinians lacked health insurance than White North
19 Carolinians; is that right?

20 A. Yes.

21 Q. But that analysis applies only statewide, correct? You
22 didn't study the 11 counties in the Black Belt for this,
23 correct?

24 A. I don't think that I do.

25 Q. All right. Thank you very much.

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1 All right. I'd like to turn now to your analysis of
2 Senate Factor 6 about racial appeals.

3 And for purposes of this analysis, Dr. Burch, do I
4 understand that your method was essentially to search for
5 statements made by candidates that were consistent with the
6 sorts of statements that you concluded would fall into the
7 categories of explicit or implicit racial appeal?

8 A. It could also include ads, not just statements.

9 Q. But candidate-generated material?

10 A. Material generated in the course of a campaign.

11 Q. I see. Okay. And you didn't use any database in
12 particular to conduct a search for these campaign materials;
13 is that correct?

14 A. In terms of -- you mean a database of campaign websites
15 or something like that?

16 Q. As an example I know Dr. Critchlow used newspapers.com, a
17 newspaper aggregator. You didn't use any particular
18 aggregation website or other website to search for the
19 examples of racial appeals that you found; is that right?

20 A. I think I used several, including Google, I think, for --
21 sometimes with especially local newspapers if you try to
22 access the site through the open web or through their websites
23 you get a pay wall, so I think he might have actually looked
24 through Newsbank to go through some of those.

25 Q. And Newsbank, just to make sure we're clear for the

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1 record, that's a newspaper aggregator like a newspapers.com?

2 A. Yeah.

3 Q. So, for example, you might have looked at certain
4 candidate's campaign websites or social media sites; is that
5 right?

6 A. I did.

7 Q. But you didn't look at every candidates' website or
8 social media website, did you?

9 A. No.

10 Q. And, in fact, you didn't keep any list of the sites that
11 you visited, right?

12 A. No. Just the ones that I cite here.

13 Q. And, you know, I heard the discussion about
14 Dr. Critchlow's search terms on your direct examination. But
15 your expert report doesn't report any of the search terms that
16 you used, does it?

17 A. Only, again, the -- within the broader framework of
18 implicit and explicit racial appeals. A variety of words
19 could have fallen into that, so I was not restricted --

20 Q. Not restricted, okay.

21 A. -- in terms of the kinds of statements that candidates
22 might make that would count.

23 Q. Okay. And you didn't keep a list of the search terms
24 that you used, right?

25 A. No. Again, I just describe in detail what I found.

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1 Q. Okay. I understand. Earlier in your testimony you
2 described -- used the concept of a rubric to describe how you
3 identified an item as a racial appeal. Do you recall that?

4 A. Yes.

5 Q. So do you have a copy of the -- you didn't -- I should
6 say, you didn't produce a copy of that rubric with your expert
7 report, did you?

8 A. So what I was referring to here is the definition of an
9 explicit racial appeal as referring to race or racial
10 stereotypes explicitly. And, again, this note that's
11 primarily contained in the paragraph beginning on page 24 that
12 talks about implicit racial appeals as racial appeals that
13 make racial attitudes and concerns more salient in the minds
14 of voters even without explicitly mentioning or referring to a
15 particular race or group.

16 Implicit racial appeals may rely on certain code words or
17 issues, use images of Black exemplars, or a combination of
18 both to make race more salient to voters.

19 I then go on to talk about examples from Caliendo and
20 McIlwain which talk about the extent to which these appeals
21 prime anti-minority racial fear, resentment, and bias through
22 a variety of audiovisual and textual cues that associate
23 persons of color with longstanding negative racial
24 stereotypes.

25 I talk about implicit racial appeals can rely on code

1 words such as inner-city or sanctuary city or reference crime,
2 welfare, and illegal immigration.

3 Again, with respect to what I was looking for in the
4 rubric, racial appeals in television ads typically includes
5 elements such as, quote, "a salient stereotype, often those of
6 criminality, laziness, taking undeserved advantage, the charge
7 of liberalism, a minority opponent's image, all White
8 non-candidate images and an exposed audience that includes a
9 high percentage of White potential voters."

10 And so, again, when I discuss implicit racial appeals in
11 my report, I discuss them in the context of what I note there
12 in that particular paragraph.

13 Q. And you don't include any documentation in your report
14 about examples of cases, for example, where you may have
15 searched a candidate's website or social media or something
16 like that and you didn't find that they had made a racial
17 appeal, correct?

18 A. No.

19 Q. Okay. So as I understand it, you essentially came up
20 with this rubric of the sort -- I apologize for being informal
21 about this. Things that contain markers, I've heard a lot of
22 different words. But essentially, things that you believe the
23 research supports that would be a racial appeal, and then you
24 essentially went out and tried to find those appeals; is that
25 right?

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1 A. Again, I looked at major statewide races in the state,
2 and for the most recent ones. And, again, those major races
3 are governor, the Attorney General, U.S. Senate, NC State
4 superintendent, other -- as well as other recent cases where,
5 again, racial appeals have come up prominently in North
6 Carolina and national media.

7 But, again, I'm trying -- I was trying to focus on recent
8 cases because, again, because I think that those are more
9 relevant.

10 Q. I understand. But although you focused on -- you focused
11 on higher prominence races, in fact, several of the races
12 where you identified a racial appeal were county-level races;
13 isn't that right?

14 A. Yes. So my search was, again, extensive, and I found
15 racial appeals at multiple levels, not just at those most
16 recent statewide elections.

17 Q. Okay. But you'd agree that your expert reports in this
18 case do not report the results of a statistical evaluation of
19 the extent to which political campaigns are characterized by
20 racial appeals, correct?

21 A. I'm having a hard time envisioning what that would look
22 like.

23 Q. Okay.

24 A. So a statistical analysis of where I went through and --
25 for instance, Dr. Critchlow's coding? Again, I went through

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1 and did do some work to reanalyze his rubric or his analysis
2 by, again, taking his claim that implicit racial appeals are
3 characterized by those where a racism charge, according to his
4 table, was made in a newspaper in North Carolina. So I did go
5 back and do some of that work for the cases -- for the
6 elections that he cited. But as far as another kind of
7 statistical analysis, I'm not really sure what that would look
8 like.

9 Q. Sure. Okay. So just to make sure I understand. You --
10 and I appreciate you have Jesse Helms in here and you have
11 some historical examples.

12 But focusing on those recent examples. I believe you had
13 examples from 2018, 2020, 2022, and 2024; is that right?

14 A. That's right.

15 Q. And you have examples from offices ranging from statewide
16 officials, right?

17 A. Yes.

18 Q. You have members of Congress?

19 A. Yes.

20 Q. State legislature?

21 A. Yes.

22 Q. And local and county offices, correct?

23 A. Yes. As I said, I found racial appeals explicit, mostly
24 explicit racial appeals at all of those levels across all of
25 those years.

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1 Q. Understood. Okay. So you'd agree with me that the
2 entire General Assembly is elected every two years, correct?

3 A. I don't know. I assume so.

4 Q. You assume so. Okay. And between the two chambers,
5 there's 120 members of the General Assembly; is that right?
6 Did I just say that wrong? 170. I apologize. I got that
7 wrong.

8 A. I'm sorry. You caught me -- I was doing the math in my
9 head.

10 Q. I had the number right. It came out of my mouth wrong.
11 120 in the House and 50 in the Senate; is that right?

12 A. Yes. I was doing the math there in my head.

13 Q. Sorry. That was my mistake.

14 If we take 170 and multiply it by four, we'd have a
15 fairly large number, right?

16 A. Yes.

17 Q. About 680, right?

18 A. That's right.

19 Q. Okay. And then North Carolina, I was informed yesterday,
20 has 100 counties; do you agree with that?

21 A. Yes.

22 Q. So there could be hundreds of countywide races during
23 those -- that eight year period; is that right?

24 A. That's right.

25 Q. And then, of course, you have members of Congress and

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1 statewide. So it's plausible there could have been over a
2 thousand election contests in North Carolina from 2018 to
3 2024; is that right?

4 A. That's right.

5 Q. And your report does not analyze the extent to which on a
6 statistical or systematic basis that these racial appeals
7 appear in all of those contests, correct?

8 A. No. But, again, I don't know of any analysis that looks
9 at racial appeals in that way.

10 Q. I understand. Okay. So taking a step back, Dr. Burch.
11 Your report in this case identified what you concluded were
12 racial appeals in specific election contests in North
13 Carolina; is that correct?

14 A. Yes.

15 Q. And would you agree with me that none of the alleged
16 appeals occurred in a contest for an office in northeastern
17 North Carolina?

18 A. I believe people in northeast North Carolina voted for
19 governor.

20 Q. Sure. But you understand that's a statewide office,
21 correct?

22 A. So what you're telling me -- so you're asking me if
23 those -- if none of the elections covered --

24 Q. Are specific to electoral districts or counties within
25 northeast North Carolina.

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1 A. Right. Just the statewide ones, I think.

2 Q. Correct.

3 A. Yeah. I'm just -- my answer is just the statewide ones,
4 I think.

5 Q. Understood. And you'd agree that none of the contests
6 where you found an alleged racial appeal was a contest for the
7 North Carolina State Senate, correct?

8 A. Hang on for a second, let me check that because I'm not
9 sure that's right.

10 (Pause in the proceeding.)

11 A. That's right.

12 Q. Okay. And do I have it right that only three of the
13 contests you identify as containing a racial appeal were
14 contests for a seat in the North Carolina State House?

15 A. I -- off the top of -- in just a quick count, I found
16 four. So Russell Walker, 2018; Joseph Gibson, III, 2022 and
17 2024; and Representative John Bradford on page 32.

18 Q. Okay.

19 A. Hang on. One more. Okay. Those are the ones I
20 mentioned specifically.

21 Q. Okay. You mentioned John Bradford, but in 2024 John
22 Bradford was running for Congress, wasn't he?

23 A. Let me see. He was a -- he was -- he represented State
24 House District 98.

25 Q. Correct. But in 2024 your citation in your report goes

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1 to a Bradford for Congress website, doesn't it?

2 A. Yes.

3 Q. Okay. So you understand he was running for Congress that
4 year, correct?

5 A. Yes, while he was representing the House.

6 Q. Understood. All right.

7 And so of those contests, so if we go back it appears
8 you've identified -- you mentioned Russell Walker, you
9 mentioned Joseph Gibson. What about Diamond Staton-Williams?

10 A. Yes. I talk about that case on -- in -- on page 30, yes.

11 Q. So you have basically three candidates for State House
12 that you identify as having made racial appeals; is that
13 correct?

14 A. Yes.

15 Q. Okay. And of the three, the only one that actually
16 won -- that actually won the race was Diamond Staton-Williams
17 in 2022, correct?

18 A. You mean the general election?

19 Q. Correct.

20 A. Yes.

21 Q. All right.

22 A. Again, I'll have to go back and look at my notes here,
23 but I believe I just -- I did discuss how some won primaries.

24 Q. Okay. So I briefly want to talk about your definition of
25 an implicit racial appeal. So if we can go to page 24 of your

1 report, PX21. And I'd like to highlight the first sentence on
2 the first full paragraph of that page.

3 It reads, "Implicit racial appeals make racial attitudes
4 and concerns more salient in the minds of voters, even without
5 explicitly mentioning or referring to a particular race or
6 group." Do you see that?

7 A. I do.

8 Q. But then in the paragraph you then go on to discuss a
9 definition of racist appeals advanced by Caliendo and
10 McIlwain; do you see that?

11 A. Yes.

12 Q. And do I have that correct that that definition would be
13 an appeal that, quote -- appeals that, quote, "Prime
14 anti-minority racial, fear, resentment, and bias through a
15 variety of audiovisual and textual cues that associate persons
16 of color with longstanding negative racial stereotypes." Do
17 you see that?

18 A. Yes.

19 Q. And for purposes of your report, are you treating the
20 Caliendo and McIlwain definition of a racist appeal as
21 tantamount to a racial appeal?

22 A. Yes. So, for instance, the important thing I think that
23 we need to think about with respect to implicit racial appeals
24 is actually in the preceding paragraph. And so there,
25 Mendelberg argues that because of the norm of racial equality

1 it basically meant for a time that candidates have an
2 incentive to appeal to White racial fears, biases, and
3 stereotypes but also to appeal to racial egalitarian. And so
4 they're trying to activate these racial attitudes in ways that
5 are subtle; that don't actually specifically talk about race.

6 So it's sort of those two paragraphs together.

7 Q. Okay. I see. So you'd agree that the definition on the
8 first sentence of this paragraph that just talks about
9 increasing the salience of racial attitudes and concerns is
10 different from the racist appeal definition Caliendo and
11 McIlwain apply in this paragraph, right?

12 A. Again, I think the combination of those two paragraphs
13 means that they're pretty similar. So, again, the notion of
14 having -- of trying to make an implicit racial appeal is
15 you're trying to appeal to these kinds of negative racial
16 stereotypes and attitudes and prime them for voters without
17 saying it explicitly.

18 So, again, if you're trying -- again, it's this attitude
19 of the -- you're trying not to violate this norm of racial
20 equality. So that's where the negativity comes in for both of
21 those.

22 Q. I see. All right. And, in fact, there can be some
23 racial appeals that would not meet the definition of a racist
24 appeal; is that correct?

25 A. I don't really know what they -- if Caliendo and McIlwain

1 say something differently with respect to racist or --
2 racist -- racial appeals.

3 Again, the point here is that racial -- it's, again,
4 priming, which is activating attitudes, of racial fear,
5 resentment, and bias, and that's similar to the statement that
6 Mendelberg has -- that I have here where I'm citing
7 Mendelberg. Candidates still have an incentive to appeal to
8 racial fears, biases, and stereotypes. So those are
9 similar -- I think that those definitions are cross or
10 similar.

11 Q. I see. All right. So you identify some examples of code
12 words on page 24 of your report that you indicate implicit
13 racial appeals can rely upon, and one is a sanctuary city; is
14 that right?

15 A. That's right.

16 Q. Can you define what a sanctuary city is?

17 A. So typically that's a city of -- that may agree not to
18 work with federal agencies in order to report people for
19 certain crimes or they may ask -- say that they won't ask
20 about immigration status. And there's also sometimes there
21 can be specific declarations where they say that they're
22 sanctuary city, for instance.

23 Q. Would you agree that the cities that implement sanctuary
24 city policies are intending to benefit the immigrants to whom
25 those policies apply?

1 A. They could be.

2 Q. And this term was initially used by Democratic mayors and
3 governors, correct?

4 A. It could be. But, again, as I'm citing in footnote 89,
5 I'm citing research in that footnote that discusses the
6 effects of all of those terms in terms of what happens when
7 voters hear them.

8 And again, the research there is talking about how and
9 documenting how those particular terms do, in fact, prime
10 these kinds of White voters and other voters sometimes to
11 think about racial attitudes.

12 So, again, the literature here is actually saying what
13 the effects of these particular tested terms are.

14 Q. Now, in your work in this case you didn't test North
15 Carolina audiences in 2024 to determine if terms like
16 sanctuary city or illegal immigration would prime
17 anti-minority attitudes in this state, did you?

18 A. Again, there's a large body of literature that does that
19 work. I only cite a few examples here, but I didn't need to
20 reinvent that wheel.

21 Q. But just to make sure I get a clear answer to my
22 question. Do I hear correctly you did not conduct your own
23 experiment into seeing how North Carolina voters react to
24 sanctuary city, illegal immigrant, or the other code words
25 that you identify; is that right?

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1 A. No, I did not.

2 Q. And there are methods that you could have employed to do
3 so; is that right?

4 A. Not in the context of this case.

5 Q. So you couldn't, for example, have taken a survey or a
6 focus group of North Carolina voters to see how they would
7 react to some of the ads that you cited in your report; do I
8 understand that correctly?

9 A. No, I wasn't asked to do that. So that -- that costs a
10 lot of money, and I didn't have the resources to do that.

11 Q. Okay. All right. So you relied instead on published
12 research that relied on national surveys; is that correct?

13 A. It doesn't necessarily -- some of them aren't always
14 national surveys; some of them can have other -- more
15 localized data as well. Again, there's just a large body of
16 research that discusses the reaction of people to certain cues
17 and whether they prime race.

18 Q. All right. Would you agree illegal immigration was an
19 issue of public concern in 2024?

20 A. Yes.

21 Q. Would you agree that discussion of illegal immigration on
22 its own is not necessarily a racial appeal?

23 A. Again, the racial appeals that I discuss in my report
24 rely on several markers of implicit racial appeals, not just
25 one in isolation.

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1 Q. So, again, just to make sure I have a clear answer to my
2 question, do I understand you to be saying that illegal
3 immigration -- discussion of illegal immigration is not
4 necessarily a racial appeal?

5 A. That's right.

6 Q. I'd like to briefly discuss a few of the racial appeals
7 that you testified about on direct examination.

8 First I'd like to discuss the TikTok ad from the 2024
9 Attorney General race. Do you recall that?

10 A. Yes.

11 Q. And you characterize the TikTok ad as an explicit racial
12 appeal; is that right?

13 A. Yes.

14 Q. To be clear, both of the candidates for Attorney General
15 that year, Dan Bishop and Jeff Jackson, were White men,
16 correct?

17 A. Yes.

18 Q. And both were incumbent U.S. Congressman; is that
19 correct, as well?

20 A. I think so, yes.

21 Q. Are you aware of legislation passed by Congress
22 ultimately potentially requiring the closure of TikTok?

23 A. I think that has been put on hold, but yes.

24 Q. And that piece of legislation led to TikTok going dark
25 briefly this year; is that right?

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1 A. Yes.

2 Q. And do you agree the concern leading to the passage of
3 that particular piece of legislation was concern that the
4 Chinese government owned at least in part TikTok?

5 A. Yes.

6 Q. Okay. And that there were security and espionage
7 concerns raised because of the Chinese government's ownership
8 of TikTok?

9 A. Yes.

10 Q. And were you aware that there was a legal challenge to
11 the TikTok legislation?

12 A. I believe TikTok challenged it.

13 Q. Do you recall if the Courts rejected that challenge?

14 A. I don't know the exact wording of the opinion or the
15 decision, but the ban was allowed to go into effect.

16 Q. All right. And, in fact, the concern over security and
17 espionage around TikTok was bipartisan in nature; wasn't it?

18 A. After a while, yes.

19 Q. All right. And so when you talk about -- so when you
20 talk about this being a racial appeal against Chinese citizens
21 in America, is the suggestion that voters in North Carolina
22 don't understand that a reference to Chinese ownership is a
23 reference to the Chinese government?

24 A. So two things: One, again, this fits both my definition
25 of an explicit racial appeal as well as Dr. Critchlow's

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1 because, again, it was covered in North Carolina newspapers as
2 such in I believe the ad that I cite to you here in page 29.

3 Two, again when we apply the rubric that I discuss with
4 respect to racial -- either explicit racial appeals to the
5 extent that it is talking about Chinese and calling --
6 referring to a particular -- and connecting that to a
7 particular candidate, relying on prominent stereotypes of
8 Asian-American perpetual foreignness, all of these features of
9 the ad, not just one, are why they call the ad a dog whistle.

10 Q. So do I understand your position to be that voters
11 looking at this ad would not understand the reference to
12 Chinese to be the Chinese government as opposed to Chinese
13 people writ large?

14 A. It could even be, again, referring to the Democratic
15 candidate himself is a Chinese social media star who's
16 releasing ads that are written in Chinese.

17 So, again, there's no -- I don't think there's imagery,
18 for instance, that says that he's White. They can be calling
19 him a Manchurian candidate. There could be all kinds of
20 connotations here, again, that are portraying him as, again,
21 as a Chinese social media star and linking that, again, to
22 stereotypes of Asians and -- Asians as un-Americans.

23 So, again, I don't have anything new to -- different to
24 say other than those aspects of the ad that I think are
25 character -- are characterizing it as a racial appeal.

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1 Q. And just for the record, Jeff Jackson won that election,
2 correct?

3 A. I believe so.

4 Q. Let's turn briefly to another candidate you describe in
5 your report, Mark Robinson. Donald Trump carried North
6 Carolina in the 2024 election; isn't that right?

7 A. That's right.

8 Q. But in the 2024 Governor's race, you'd agree that Josh
9 Stein defeated Mark Robinson by 55 to 40 percent; isn't that
10 right?

11 A. I didn't know it was as high as 40; but, yes, he did
12 lose.

13 Q. So you thought Mark Robinson got less than 40 percent?

14 A. I mean, I would have assumed so, would have hoped so,
15 because these were pretty egregious statements.

16 Q. Pretty fair to say that Mark Robinson was roundly
17 defeated in the state that Donald Trump won, correct?

18 A. In the general election.

19 Q. So fair to say that any alleged racial appeals by Mark
20 Robinson didn't work out so well for him?

21 A. He actually got pretty far. He got to be lieutenant
22 governor for four years and he won the Republican primary. So
23 I think -- I think they worked out pretty well.

24 Q. Okay. All right. You criticize -- I want to turn very
25 briefly to the Staton-Williams and Brian Echevarria race in

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1 the State House in 2022. You discuss this on page 30 of your
2 opening report.

3 A. Yes.

4 Q. And just to be clear, Diamond Staton-Williams is a
5 Democrat, correct?

6 A. Yes.

7 Q. And a Black woman; is that correct?

8 A. Yes.

9 Q. And Brian Echevarria is a Black and Hispanic Republican;
10 is that correct?

11 A. I think so, yes.

12 Q. But you don't identify Staton-Williams' party affiliation
13 or race in your report, do you?

14 A. I don't think I refer to his either.

15 Q. Well, if we look at the last sentence on the first full
16 paragraph on page 30 you write, quote, "Also in 2022, the
17 campaign of Diamond Staton-Williams produced an ad showing a
18 fake mugshot of her opponent, Brian Echevarria, who is Black
19 and Hispanic." Do you see that?

20 A. Yeah. But I don't say he's a Republican or that she's a
21 Democrat.

22 Q. Correct. But you don't -- but you identify his race but
23 not hers, correct?

24 A. Oh, no. I didn't -- I think, too, I just wanted to --
25 because of the last name Echevarria, I also wanted to be sure

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1 that he was -- point out that he was of a mixed-race descent.

2 Q. And it is possible for one candidate to include an
3 accusation that another candidate is a criminal without it
4 being a racial appeal, right?

5 A. I think it should at least be true, which from my
6 understanding this mugshot was fake.

7 Q. I see. But you'd agree that false -- false political ads
8 are a separate problem from racial appeal ads, correct?

9 A. Not necessarily. So to the extent that a false political
10 ad is attempting to go link a minority candidate to a salient
11 stereotype of minority criminality using fake ads, then
12 that -- then the two are related.

13 Q. But there are plenty of fake -- or erroneous political
14 ads that have nothing to do with race; isn't that right?

15 A. Yes.

16 Q. All right. I'd like to move on to Senate Factor 7.
17 Okay. I'm just going to do -- all right.

18 Do you understand, Dr. Burch, that if I was to you -- if
19 I was -- that the BVAP, Black Voting Age Percentage, in North
20 Carolina is about 21.37 percent as of the 2020 Census?

21 A. Yes.

22 Q. Okay. So I'd like to turn to your corrected supplemental
23 report, PX271. And if I understood correctly, you'd agree
24 that a total of 38 Black candidates were elected to the
25 General Assembly in 2024; is that right?

T. Burch - Cross-Examination

1 A. That's right.

2 Q. And 28 in the House and 10 in the Senate; is that right?

3 A. Yes.

4 Q. So if I just look at the percentage 38 divided by 170,
5 would you agree with me that number is 22.35?

6 A. Sure.

7 Q. Or if you want to take the digits off, we can just call
8 it 22.

9 So you'd agree, then, that Black candidates are being
10 elected to the General Assembly in numbers proportionate to
11 their share of the Voting Age Population in the state of North
12 Carolina 2024; is that correct?

13 A. Yes. And, again, as I said before, thanks to the
14 presence of majority-minority and especially majority-Black
15 districts in the state.

16 Q. Did I hear correctly you said especially Black --
17 majority-Black districts?

18 A. Yes. So 22 of the 28 were elected from the
19 majority-minority or majority-Black districts. So -- and
20 especially in this area that we've been discussing. Also on
21 that page, Black representatives were elected to the House
22 from HD23 and HD27, both of which are majority Black in this
23 area of the state.

24 Q. Okay. Would you agree, though, that of the 22 candidates
25 elected from a majority-minority or a majority-Black district

T. Burch - Cross-Examination

1 only four were elected from a majority-Black district?

2 A. I'd have to look at the -- the number. I can't remember
3 off the top of my head.

4 Q. Okay. We will put those up for you in a moment, but
5 first I want to make sure we have our definitions in order.

6 So when you talk about a majority-Black district, would
7 you agree that is a district that has a majority-Black Voting
8 Age Population?

9 A. I'll have to look specifically at the data from the stat
10 pack of -- I can't exactly recall which -- which metric they
11 were using, whether it was VAP or whether it was all.

12 Q. That's coming. One moment.

13 But for majority-minority, do you understand that to mean
14 a district whose voting age percentage is a majority of
15 individuals who are not White non-Hispanic?

16 A. I don't know if it's voting age or not. I'd have to
17 look.

18 Q. Okay.

19 A. Again, I see the citation here, but I just don't have
20 any -- I don't see any notes about whether they're looking at
21 all or just VAP.

22 Q. So I'm going to ask Mr. Williamson to pull up Joint
23 Exhibit 104 and pull up page 21.

24 And, Dr. Burch, I will represent to you that this is the
25 stat pack for SL 2023-149 which is the 2023 House. Have you

T. Burch - Cross-Examination

1 seen this before?

2 A. Yes.

3 Q. In fact, this is the document you cite on footnote 8 on
4 that corrected supplemental report, correct?

5 A. Yes.

6 Q. Perfect. All right. So I will represent to you that
7 this goes on for three pages. So I'm going to suggest that we
8 do this one page at a time and make this simpler.

9 The first column is the district number; is that correct?

10 A. Yes.

11 Q. The column on the far right says, "Percent any part
12 Black." Do you see that?

13 A. I do.

14 Q. Do you agree that's a good definition of BVAP?

15 A. Yes.

16 Q. Perfect. All right. So if we look at that first page,
17 how many majority BVAP districts do you see?

18 A. Quick scan, I see two. And those are HD27 and HD23, the
19 ones that I referenced specifically for this region.

20 Q. Okay. You and I agree on that. So that's two.

21 Let's turn to the second of the third page. I counted
22 one on this page, HD58.

23 A. I see that.

24 Q. Do you see any others?

25 A. Quick scan, no.

T. Burch - Cross-Examination

1 Q. And then we're going to turn to the third and final page.
2 And I see one district on this page, which is HD107.

3 A. That's right.

4 Q. Do you see any others?

5 A. I do not.

6 Q. Okay. So that's four out of 120, correct?

7 A. Okay.

8 Q. All right. Now, would you also agree that you -- your
9 report is documenting Black candidate successes in several
10 House districts in North Carolina with BVAPs ranging from the
11 teens into the 30s?

12 A. There may be.

13 Q. So let's go back to the first page of this report,
14 page 21. Perfect.

15 Do you agree that HD29 was a district that you identified
16 as being won by a Black member?

17 A. Yes.

18 Q. And what's its BVAP?

19 A. Its BVAP is 31.03.

20 Q. How about House District 2.

21 A. Hang on a second. Let me see something really quickly
22 and locate this in my own notes first.

23 Q. Sure.

24 A. You said the House District 2?

25 Q. Yes.

T. Burch - Cross-Examination

1 A. 30.69.

2 Q. Perfect. And we'll only do two more for the interest of
3 time.

4 MR. LEWIS: If we can flip to the next page, Mr.
5 Williamson. Thank you.

6 BY MR. LEWIS:

7 Q. I'll represent to you in footnote 10 of your corrected
8 supplemental, you identify House Districts 54 and 56 as
9 districts won by Black representatives. Do you agree with me?

10 A. Yes.

11 Q. What's the BVAP of House District 54?

12 A. 54, you said? That is 11.6 and 11.25.

13 Q. And 56 was 11.25?

14 A. Yes.

15 Q. Okay. Thank you. So if we can return to PX271 at page
16 4. I'd like to just briefly ask you about the Senate.

17 You'd agree that Senate District 5 is not a
18 majority-Black district, right?

19 A. I don't have it listed here as a majority of White
20 districts, so I'm guessing it's -- based on the statement
21 here, all other Black state senators in 2024 were elected from
22 majority-minority districts.

23 Q. If it helps you on the screen you have a statement that
24 SD45 [sic] is about 40 percent Black. Do you see that? Top
25 of the page that's on the screen.

T. Burch - Cross-Examination

1 A. Oh, I see it here. Yes.

2 Q. Gotcha.

3 A. It's majority-minority at about 45 -- 40 percent Black.

4 Thank you.

5 MR. JONES: Did you say SD5 or SD45?

6 MR. LEWIS: I said SD5, page 4. Sorry.

7 THE WITNESS: Sorry. SD5 is majority-minority and
8 about 40 percent Black.

9 BY MR. LEWIS:

10 Q. Perfect. Let's count this up. Let me ask you this: Are
11 you aware of any other -- so you've got four majority-Black
12 districts electing Black members in the House. How many
13 majority-Black districts are there in the Senate, do you know?

14 A. I don't recall.

15 Q. Do you know if -- all right. Okay. So is it fair to say
16 that Black members have been elected to the North Carolina
17 General Assembly without needing majority-Black districts?

18 A. Yes, it's fair to say that. However, I think the main
19 point that I'm making here in this report is that, again,
20 Black people struggle to get elected in majority-White
21 districts. So, again, I'm here talking specifically about
22 majority-minority and majority-Black districts, they do tend
23 to be more successful.

24 MR. LEWIS: I have nothing further, Your Honor.

25 Thank you, Dr. Burch.

T. Burch - Redirect Examination

1 THE COURT: Any redirect?

2 MR. JONES: Just a few questions, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. JONES:

5 Q. Dr. Burch, you were asked some questions near the
6 beginning of the cross-examination about the connection
7 between the racial disparities in all of the socioeconomic
8 indicators and the racial gap in voter turnout in North
9 Carolina. Do you recall those questions?

10 A. Yes.

11 Q. Okay. And just as a reminder in terms of the racial
12 disparities and socioeconomic indicators, we saw earlier that
13 Black people are worse off than White people in North Carolina
14 across the board in all the socioeconomic indicators, right?

15 A. Yes.

16 Q. And we also saw from one of the reports that Black voter
17 turnout is lower than White voter turnout in North Carolina,
18 right?

19 A. Yes.

20 Q. And I think there was a suggestion you may not have
21 addressed that connection in your report.

22 MR. JONES: Can we pull up PX21 which is Dr. Burch's
23 's opening report.

24 BY MR. JONES:

25 Q. And, Dr. Burch, you have a hard copy in front of you as

1 well. Let's start on page 4, the second paragraph.

2 Could you read, Dr. Burch, the first sentence of that
3 paragraph?

4 A. "Of the components of socioeconomic status, educational
5 attainment is the most important predictor of voting." Just
6 the first sentence?

7 Q. And the second sentence.

8 A. "In fact, quote, 'the powerful relationship between
9 education and voter turnout is arguably the most
10 well-documented and robust finding in American survey
11 research.'"

12 Q. Is that part of your report speaking to the connection
13 between education and disparities in education and voter
14 turnout?

15 A. Yes. And I'd also add a couple of sentences down,
16 "Research also shows the relationship between education and
17 voting is a causal one."

18 Q. Thank you. Can we go to page 18 of the report.

19 Can you read the first -- the very top, the first two
20 sentences.

21 A. "Other aspects of socioeconomic status affect
22 participation in the political process as well. For instance,
23 homeownership is important because residency requirements have
24 been shown to reduce voter registration and turnout, largely
25 because residential mobility increases the administrative

1 burden of maintaining registration."

2 Q. Does that speak to the connection between disparities in
3 socioeconomic indicators and voter turnout?

4 A. Yes.

5 Q. Same page, the second paragraph. Can you read the second
6 sentence -- the first two sentences of the paragraph that
7 begins "health status"?

8 A. "Health status also may affect participation in the
9 political process. Several studies have associated poor
10 health with lower voter turnout."

11 Q. Is this also speaking from your opening report to the
12 connection between disparities in socioeconomic indicators and
13 health and the gap in voter turnout?

14 A. Yes, it does.

15 Q. From all this, what conclusion do you draw about whether
16 the race -- or racial disparities in the various areas from
17 education to employment, income, health, criminal justice
18 involvement, what conclusion do you draw about the connection
19 between those racial disparities in North Carolina and North
20 Carolina's racial gap in voter turnout?

21 A. So, again, there is a racial gap in voter turnout and
22 research has shown that disparities in these factors affect
23 voter turnout. So people who are lower in terms of health
24 outcomes, in terms of educational attainment, income, and
25 people involved in the criminal justice system, study after

1 study after study has shown that these factors do lead people
2 to vote less.

3 Q. Okay. You can pull that down.

4 You were asked some -- switching topics.

5 You were asked some questions about the many races in
6 North Carolina in the last six or seven years that you didn't
7 discuss in your reports in terms of having found any racial
8 appeals in those races. Do you recall those questions?

9 A. I do.

10 Q. And I think the suggestion was that you could do some
11 kind of mathematical or statistical comparison of the number
12 of races where you found racial appeals in North Carolina
13 recently and other races that you didn't discuss for having
14 found racial appeals; do you recall that?

15 A. I do.

16 Q. To your understanding, would that be a proper or reliable
17 way of evaluating the use of pervasiveness of racial appeals
18 in North Carolina for purposes of Senate Factor 6?

19 A. Again, I don't know of any scholarly research that takes
20 that approach; and when I've evaluated Senate Factor 6 and the
21 5 in the past, I have not taken that approach.

22 Q. Okay. Switching gears again. You were asked some
23 questions, I think it suggested that perhaps the low Black
24 enrollment at UNC Chapel Hill, which is 7.8 percent in 2024,
25 question suggesting that that low Black enrollment at UNC

T. Burch - Redirect Examination

1 Chapel Hill results from Black students choosing not to go
2 there because schools like Elizabeth City and Fayetteville
3 State offer a better value proposition at just \$500 a
4 semester. Do you recall those questions?

5 A. I do.

6 Q. And I believe you testified that even if UNC Chapel Hill
7 costs \$25,000 a year, you still thought it was unlikely that a
8 low-income Black student would turn down UNC Chapel Hill for
9 one of those other schools on the basis of value, was that
10 your testimony?

11 A. Yes, in terms of thinking about the -- weighing the costs
12 versus the benefit.

13 Q. Do you know how much UNC Chapel Hill costs per semester?

14 A. Specifically, no. I think I might have actually been
15 thinking about another state university.

16 Q. Okay.

17 MR. JONES: Can we pull up a document that shows
18 this. This is a document that we just pulled off of the UNC
19 website for undergraduate programs at UNC Chapel Hill. And if
20 we can zoom into the chart but keep the line at the bottom
21 with the asterisks that says, "undergraduate tuition." Scroll
22 down a little bit in the zoom.

23 MR. LEWIS: Your Honor, I'd like to lodge an
24 objection to this exhibit. It's not on their exhibit list.

25 THE COURT: It's fine. Just read the number.

T. Burch - Redirect Examination

1 MR. JONES: Sure.

2 THE COURT: This is getting silly. Just keep it
3 going. We've got to be good stewards of time, folks.

4 BY MR. JONES:

5 Q. Dr. Burch, do you see that UNC Chapel Hill tuition is
6 \$3,509.50 per semester?

7 A. Yes, that's the max rate.

8 Q. Given that low cost, do you think that the low Black
9 student enrollment at this school is due to Black students
10 choosing to go to other schools for financial reasons or do
11 you think it's for other reasons?

12 A. For other reasons.

13 Q. Okay. You were asked some questions about whether you
14 had used BVAP, Black Voting Age Population, or Black
15 population as a fraction of total population to identify
16 majority-Black districts in your analysis of Senate Factor 7.

17 Do you recall those questions at the end of the
18 cross-examination?

19 A. I do.

20 Q. Okay.

21 MR. JONES: Can we go to Dr. Burch's opening report
22 which is PX-- Plaintiffs' Exhibit 21, page 34. This will be
23 very fast.

24 BY MR. JONES:

25 Q. If we look at footnotes 146 and 147, Dr. Burch. Does

1 that refresh your recollection that when you were talking
2 about majority-Black districts in your report you were using
3 the census all ages by race report which is Black population
4 as a fraction of total population?

5 A. Oh, yes.

6 Q. Okay. You were asked some questions about -- this is the
7 last question I have.

8 You were asked some questions about Mark Robinson's loss,
9 which I gather was about 55 to 40 in the 2024 gubernatorial
10 race. You recall that?

11 A. I do.

12 Q. Are you aware that during that campaign it was reported
13 that Mr. Robinson had described himself as a Nazi?

14 A. I am aware.

15 Q. And even after that he apparently won 40 percent of the
16 statewide vote for governor in the general election last
17 November?

18 A. Yes.

19 Q. Do you think the fact that Mr. Robinson lost that 2024
20 governors' race after having called himself a Nazi and saying
21 he's not an African American person and calling for Black
22 people to pay reparations for their own enslavement in this
23 country, do you think his loss in that 2024 race proves that
24 racial appeals in North Carolina don't work anymore?

25 A. No. I think that they do demonstrate that there's still

T. Burch - Redirect Examination

1 a lot of people in North Carolina willing to vote for a person
2 who expresses those views.

3 MR. JONES: No more questions.

4 THE COURT: Anything else?

5 MR. JONES: I'd like to move my exhibits, which are
6 Plaintiffs' Exhibits 21, 22, 24, 27, 28, 29, 30, 31, 32, 33,
7 34, 117, 123, 125, 254, 243, and 271.

8 THE COURT: All right. They'll be received.

9 (Plaintiffs' Exhibits Nos. 21, 22, 24, 27-34, 117,
10 123-125, 264, 243, and 271 were admitted into evidence.)

11 THE COURT: Anything else from the -- re-cross?

12 MR. LEWIS: No. Thank you, Your Honor.

13 THE COURT: Thank you, Doctor. Please watch your
14 step stepping down. There's a step up as you come off the
15 witness stand and a step down through the gate.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Plaintiffs may call their next witness.

18 MR. JONES: Plaintiffs rest their case, Your Honor,
19 subject to holding the record open for the supplement expert
20 submissions regarding the 2024 election results.

21 THE COURT: All right. Defense my call their first
22 witness.

23 MS. RIGGINS: Thank you, Your Honor. Legislative
24 Defendants call Senator Ralph Hise to the stand.

25 RALPH HISE,

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1 having been duly sworn, testified as follows:

2
3 THE COURT: You may examine the witness.

4 MR. STRACH: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. STRACH:

7 Q. Good afternoon, Senator Hise. You stated your name for
8 the Court already.

9 Are you a current member of the State Senate?

10 A. I am.

11 Q. And what's your role in the State Senate?

12 A. I represent the 47th District which is nine counties in
13 the western part of the state. I serve as the Deputy
14 President Pro Tem of the North Carolina Senate and serve as
15 the Chairman of the now-Elections Committee but historically
16 was the Elections and Redistricting Committee.

17 Q. All right. What was your role in the redistricting that
18 took place in 2023?

19 A. I was one of the three co-chairs along with Senator Paul
20 Newton, Senator Warren Daniels of the Election and
21 Redistricting Committee.

22 Q. All right. In your capacity as a co-chair of the Senate
23 Committee on Elections and Redistricting, did you participate
24 in the drawing of the 2023 Senate redistricting plan?

25 A. I did.

R. Hise - Direct Examination

1 Q. If you want to open up your binder to Tab 1 which is
2 Joint Exhibit 1, we'll pull that up on the screen at the same
3 time. Is this a copy of the enacted 2023 Senate Plan?

4 A. It is.

5 Q. When did the drawing of this plan start?

6 A. So we began the process for drawing the Senate district,
7 the Congressional district and House district in September of
8 '23.

9 Q. September when?

10 A. My days -- '23.

11 Q. Why did you start drawing in September of 2023?

12 A. 2023 is a long session of the General Assembly, that's
13 when we begin enacting our two-year budget and so the first
14 factor is that we needed to get through the budget process for
15 the State of North Carolina and then begin the redistricting
16 process on kind of a clear slate. We had received from the
17 State Board of Elections the dates that would require the
18 shape files of the maps to be enacted and presented to them so
19 that it would not be necessary to move candidate filing or any
20 other parts of the election.

21 Q. All right. Were there any other impacts that the budget
22 negotiation enactment had on the redistricting process?

23 A. We had completed the budget process, but time again, the
24 reason we chose that is you want to make sure that
25 redistricting is its own entity in going and it is not tied to

R. Hise - Direct Examination

1 provisions of the budget or everything else and it allows the
2 entire General Assembly to focus on just the redistricting
3 process and kind of takes those other considerations out.

4 Q. All right. So in starting the redistricting process in
5 September of 2023, were you in some way trying to run out the
6 clock so there was no time for challenges to the Plan?

7 A. No, we were trying to make sure we finished the budget
8 process which already gone well longer than it should have, as
9 it normally does, and we wanted to make sure that we could get
10 the files to the Board of Elections in time to not change
11 those dates.

12 Q. All right. As one of the co-chairs of the Redistricting
13 Committee, did you participate in drafting criteria for the
14 drawing of the 2023 Plan?

15 A. I did.

16 Q. All right. Why don't you turn to Tab 2 in your binder
17 which is Joint Exhibit 4. We'll pull that up.

18 Senate Hise, is this a copy of the 2023 Senate Plan
19 criteria?

20 A. It is.

21 Q. Can you give a brief explanation of the first criteria
22 that we see there?

23 A. The first criteria here is what we call equal population
24 unlike the congressional districts. So court order of
25 Stephenson and others have given us a plus or minus

R. Hise - Direct Examination

1 five percent variance so that any Senate district can be
2 within plus or minus five percent. It allows us to do other
3 things in the redistricting process different from the
4 congressional district.

5 Q. What's your understanding of the county grouping and
6 traversal criterion?

7 A. So what we receive from that I call a pyramid structure
8 for the county groupings and what it requires -- because we
9 have a constitutional provision for whole counties and how we
10 implement that is to say is if a single county contains any
11 whole number of, in this case, Senate seats, it must be
12 created as a single whole county. Once you have completed
13 that, you will then search the map for any two counties with a
14 contiguous border that contain a whole number of Senate seats,
15 then you must contain two, then you must contain three, then
16 you must contain four, and it is a pyramid structure you
17 cannot not create three county tiers in order to create more
18 four county groupings, so that's how I understand the county
19 groupings.

20 Q. All right. Was racial data used in the drawing of the
21 2023 Senate Plan?

22 A. It was not.

23 Q. Why not?

24 A. Because historically we've done different things, and
25 court rulings have found that districts that we use racial

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1 data in were not allowed in that process so we have since for
2 several iterations of the drawings -- of the drawings of the
3 maps now not used -- decided not to use racial data in any of
4 the drawings and have had many of those maps upheld by the
5 courts since.

6 Q. Was political data used in the drawing of the 2023 Senate
7 Plan?

8 A. It was.

9 Q. And why was the choice made to use political data?

10 A. Rulings from the U.S. Supreme Court as well as later the
11 State Supreme Court is that drawing of these districts is an
12 innate political matter and a legislative matter and we chose
13 it would well guide our direction for districts that we had
14 choices in creating.

15 Q. All right. Was incumbency considered in the drawing of
16 those plans?

17 A. It was.

18 Q. All right. Let's go back to Tab 1, the map. Did you
19 participate in the actual drawing of the Senate districts in
20 this map?

21 A. So in our committee rooms and others that we set up, it
22 was my job to direct central staff to make all the physical
23 movements of the map, and they did. So they were the ones
24 driving the mouse, but every move they made was directed by
25 the chairs, which included myself.

R. Hise - Direct Examination

1 Q. All right. So if you see Senate District 1 and Senate
2 District 2 in this map in the far east of the state, can you
3 explain why those two Senate districts were drawn the way that
4 are shown here?

5 A. Yes. So as we go down the pyramid, you come to these two
6 districts that they represent an 8-county pod and a 10-county
7 pod within these two areas. There actually are two choices
8 for 8-county pods and 10-county pods in this.

9 We chose this particular grouping of the 10 and 8
10 counties for a couple reasons. One, as we talked about the
11 community, we had some testimony on trying to preserve the
12 fingerling counties in the northeast as well as parts of the
13 coastal region. This District 1 keeps four of the five
14 fingerling counties together within a district which performs
15 better than the alternative podding that was done.

16 We also looked at the media markets. We had some
17 conversations about -- with others in those districts, most of
18 district, what is 1 in this map, is in the Norfolk media
19 market. That's where they get TV, they get radio, whereas the
20 District 2 comes more from the Greenville area.

21 And so those plus preserving the coastal areas of the
22 state is where we ultimately landed on making this was a
23 better decision. This was also our initial decision in 2021.

24 Q. All right. And looking at this map, are there other
25 districts in eastern North Carolina that are also made up

R. Hise - Direct Examination

1 entirely of the county grouping?

2 A. There are quite a few. If you look out here, Districts
3 3, 4, 5, 6, 11, are all made of the total county groupings.

4 Q. All right. Do you recall when the first draft of this
5 particular map was released to the public?

6 A. It would have been in October.

7 Q. All right. Was there any effort to solicit feedback from
8 the public?

9 A. So we -- in addition to what we've done previously
10 drawing the maps, we held three additional public hearings to
11 solicit public input. Over and above the public hearings, we
12 also opened the portal on the website during the time so any
13 member of the public could submit comments or others about the
14 map or organizations, not even just members of the public.

15 Q. All right. During committee meetings and hearings, et
16 cetera, on this map, did you solicit the public for any other
17 type of information?

18 A. We asked on multiple occasions, I attempted to at every
19 committee meeting that was possible, for anyone who had
20 evidence of legally significant racially polarized voting to
21 submit that to this committee.

22 Q. Were any of these public hearings in northeastern North
23 Carolina?

24 A. Elizabeth City was one of the three areas.

25 Q. All right. Given your appeals to the public for evidence

R. Hise - Direct Examination

1 about legally significant racially polarized voting, did you
2 get any such information from anyone?

3 A. We received -- the determination of the chairs is that we
4 received nothing that indicated it was evidence -- or was
5 evidence of legally significant racially polarized voting.

6 Q. All right. Do you recall if you received a letter from
7 the Southern Coalition for Social Justice?

8 A. We did.

9 Q. What do you recall about that letter?

10 A. I recall that the letter itself which identified itself
11 as being based on preliminary data that was coming had
12 specifically asked us to change the plotting that is here in
13 the 2023 map back to the plotting that was -- originally we
14 did in compliance with the courts for the other 10-8 county
15 plotting.

16 Q. All right. So they wanted you to go back to the grouping
17 in this area, the state that was in place in 2022?

18 A. Yes.

19 Q. Do you recall whether anything in that letter requested
20 the legislature to draw a majority-Black district?

21 A. I did not recall they mentioned that at all.

22 Q. All right. Do you know if the groupings as arranged in
23 the 2022 map after the court litigation, were either one of
24 those two districts a majority-Black district?

25 A. They would not have been, no. Or they were not for the

R. Hise - Direct Examination

1 election I conducted.

2 Q. All right. Were any amendments made to this map
3 before -- well, let me put it to you this way: Were there any
4 amendments that passed offered by Democrat members that were
5 offered prior to the enactment of this map?

6 A. There were two amendments accepted by the committee, both
7 were made by Democrat members. Senator Woodard had made an
8 amendment to change the district configuration in Durham
9 County which he represented that the committee ultimately
10 accepted, and Senator Garrett had made one for the Greensboro
11 area that the members who represented Greensboro had also
12 agreed to, and the committee ultimately accepted.

13 Q. Do you recall if Senator Blue offered any amendments to
14 this map in the Senate committee meetings?

15 A. He did not.

16 Q. All right. Do you recall if Senator Blue offered any
17 amendments to this map on the Senate floor?

18 A. He did.

19 Q. What do you recall about those?

20 A. There were two amendments that he had offered. One,
21 again, changes the configuration of District 1 and 2 to the
22 other county podding district; and the other he claimed on the
23 floor had created in a much broader area of eastern North
24 Carolina a majority-minority district and adjusted the
25 districts around it accordingly.

1 Q. All right. Did you support the amendments?

2 A. I did not.

3 Q. Why not?

4 A. One, because we didn't have -- they were drawn using
5 racial data, that was evidence from what he presented in those
6 which is a criteria we rejected as the committee, and the data
7 that was available, including the stat pack, was not included
8 in it so we had really incomplete information to make a
9 decision on; and as a result, the Senate decided to table both
10 motions.

11 Q. All right. At any time during this redistricting process
12 that finally produced this map, did you ever receive any
13 evidence of legally significant racially polarized voting?

14 A. We did not.

15 THE COURT: It's time for our evening recess. It's
16 5:00 o'clock on my watch, so we'll be in recess until
17 9:00 a.m. tomorrow.

18 * * *

19 (The proceedings concluded at 5:00 p.m.)
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1 UNITED STATE DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA
3

4 CERTIFICATE OF OFFICIAL REPORTER
5

6 I, Amy M. Condon, CRR, RPR, CSR, Federal Official
7 Court Reporter, in and for the United States District Court
8 for the Eastern District of North Carolina, do hereby certify
9 that pursuant to Section 753, Title 28, United States Code,
10 that the foregoing is a true and correct transcript of the
11 stenographically reported proceedings held in the
12 above-entitled matter and that the transcript page format is
13 in conformance with the regulations of the Judicial Conference
14 of the United States.
15
16

17 Dated this 26th day of February, 2025.
18

19 *Amy M. Condon*

20 /s/ Amy M. Condon
21 Amy M. Condon, CRR, CSR, RPR
22 U.S. Official Court Reporter
23
24
25